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# Delaware Register of Regulations

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Issue Date: February 1, 2021

Volume 24 - Issue 8, Pages 722 - 813

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 15, 2021.

*"Sunset at Gordon's Pond"*



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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## CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 17	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

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**Symbol Key**

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Emergency Regulations**

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504, and 29 Delaware Code, Section 10119 (16 **Del.C.** §§122(3)(a) and 504 & 29 **Del.C.** §10119)  
16 **DE Admin. Code** 4202

**EMERGENCY SECRETARY'S ORDER****4202 Control of Communicable and Other Disease Conditions**

**Pursuant to 16 Del. C. §§ 122(3)(a) and 504, 29 Del. C. § 10119, and Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat**

**16 DE Admin Code 4202: *Control of Communicable and Other Disease Conditions***

**AUTHORITY**

Pursuant to 16 *Del. C.* §§ 122(3)(a) and 504, 29 *Del.C.* §10119, and Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration"), the Department of Health and Social Services ("Department") is renewing emergency regulatory amendments to 16 *DE Admin. C.* 4202: *Control of Communicable and Other Disease Conditions*. Additionally, 29 *Del. C.* §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del. C.* §10115. Moreover, 16 *Del. C.* §§ 122(3)(a) and 504 authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and

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control the spread of all diseases that are dangerous to the public health and to declare any disease a notifiable disease.

### **REASON FOR THE EMERGENCY ORDER**

The Department of Health and Social Services issued an order on March 10, 2020 requiring all laboratories and providers to immediately report all SARS-CoV-2/COVID-19 tests and results to the Division of Public Health. While the existing *Control of Communicable and Other Disease Conditions* regulations specify that Severe Acute Respiratory Syndrome (SARS) is a notifiable disease/condition, under which SARS-CoV-2/COVID-19 falls, this Emergency Order clarifies that all novel coronavirus causing severe acute respiratory disease, including the 2019 novel coronavirus disease COVID-19, are considered notifiable and are required to be reported to the Division of Public Health in accordance with these regulations.

### **EFFECTIVE DATE OF ORDER**

It is hereby ordered, that 16 *DE Admin. C. 4202: Control of Communicable and Other Disease Conditions*, specifically, Appendix I, which lists notifiable disease/conditions, is temporarily modified as shown by underline as follows:

Coronavirus, novel (novel coronavirus causing severe acute respiratory disease including the 2019 novel coronavirus disease [COVID-19], severe acute respiratory syndrome-associated coronavirus disease [SARS-CoV], and Middle East Respiratory Syndrome [MERS-CoV])

The Emergency Order took effect on October 1, 2020 and was effective for 120 days. This renewal shall take effect on January 29, 2021 and shall remain in effect for 60 days, consistent with 29 *Del. C. § 10119(3)*.

### **PETITION FOR RECOMMENDATIONS**

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal Street, Dover, DE 19901, by email to [Alanna.Mozeik@Delaware.gov](mailto:Alanna.Mozeik@Delaware.gov), or by fax to 302-744-5361.

### **ORDER**

It is hereby ordered, this 19th day of January 2021, that the above referenced amendment to 16 *DE Admin. C. 4202: Control of Communicable and Other Disease Conditions*, a copy of which is hereby attached, is adopted, pursuant to the Governor's Emergency Declaration, 16 *Del. C. § 122(3)(a)*, and 29 *Del. C. § 10119*, as referenced above, and supported by the evidence contained herein, effective January 29, 2021.

Molly K. Magarik  
Cabinet Secretary

**4202 Control of Communicable and Other Disease Conditions**  
**(Break in Continuity of Sections)**

### **APPENDIX I**

**State of Delaware - List of Notifiable Diseases/Conditions**

<b>List of Notifiable Diseases/Conditions</b>
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## EMERGENCY REGULATIONS

AIDS (S)	Amoebiasis
Anthrax (T)	Arboviral human infections (including West Nile Virus, Eastern Equine Encephalitis, etc.)
Babesiosis	Botulism (T)
Brucellosis (T)	Campylobacteriosis
Chickenpox (Varicella)	Chancroid (S)
Cholera (toxigenic <i>Vibrio cholerae</i> 01 or 0139) (T)	Chlamydia (S)
Creutzfeldt-Jakob Disease (T)	Coccidioidomycosis
Cyclosporiasis	Cryptosporidiosis
Dengue Fever (T)	Cytomegalovirus (neonatal only)
Enterohemorrhagic <i>E. coli</i> including but not limited to <i>E. coli</i> 0157:H7 (T)	Diphtheria (T)
Encephalitis	Ehrlichiosis
Enterococcus species, (Vancomycin resistant-invasive only) (A)	Enterobacteriaceae, carbapenem-resistant (invasive or urine only)(A)
ESBL resistance (Extended-Spectrum B-lactamases-invasive only) (A)	Foodborne Disease Outbreak (T)
Giardiasis	Glanders (T)
Gonorrhea (S)	Granuloma inguinale (S)
	Hansen's Disease (Leprosy)
Guillain-Barre	Haemophilus influenzae, invasive
Hantavirus (T)	Hepatitis A (T)
Hemolytic Uremic Syndrome (T)	Hepatitis C
Hepatitis B	Herpes, congenital (S)
Hepatitis Other	Histoplasmosis
Herpes, genital (S)	Human Papillomavirus (S)
HIV (S)	Influenza Associated Mortality (T)
Influenza	Lead Poisoning
Kawasaki Syndrome	Leptospirosis
Legionellosis	Lyme Disease
Listeriosis	Malaria
Lymphogranuloma venereum (S)	Melioidosis
Measles (T)	Meningococcal Infections, invasive only (T)
Meningitis	Mumps (T)
Monkey Pox (T)	Nosocomial (Healthcare Associated) Disease Outbreak (T)
Norovirus	Pertussis (T)
Pelvic Inflammatory Disease (N. gonorrhoea, C. trachomatis, or unspecified) (S)	Poliomyelitis (T)
Plague (T)	Q Fever
Psittacosis	Reye Syndrome
Rabies (man and animal) (T)	Ricin Toxin (T)
Rheumatic Fever	Rocky Mountain Spotted Fever
Rickettsial Disease	Rubella, congenital (T)

Rubella (including congenital which is rapidly reportable)	<del>Severe Acute Respiratory Syndrome (SARS) Coronavirus, novel (novel coronavirus causing severe acute respiratory disease including the 2019 novel coronavirus disease [COVID-19], severe acute respiratory syndrome-associated coronavirus disease [SARS-CoV], and Middle East Respiratory Syndrome [MERS-CoV]) (T)</del>
Salmonellosis	Shigellosis
Shiga Toxin Production	Smallpox (T)
Silicosis	Staphylococcal aureus, Methicillin Resistant-invasive only (MRSA) (A)
Staphylococcal Enterotoxin (T)	Streptococcal Disease, invasive group A or B (T)
Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T)	Syphilis (S)
Streptococcus pneumoniae, invasive (sensitive and resistant) (A)	Toxic Shock Syndrome (Streptococcal or Staphylococcal)
Tetanus (T)	Trichinellosis
Toxoplasmosis	Tularemia (T)
Tuberculosis (T)	Typhus Fever (endemic flea borne, louse borne, tick borne)
Typhoid Fever (T)	Vibrio, non-cholera
Vaccine Adverse Reaction	Waterborne Disease Outbreaks (T)
Viral Hemorrhagic Fevers (T)	Yersiniosis
Yellow Fever (T)	

- (T) - report by rapid means (telephone, fax or other electronic means)
- (S) - sexually transmitted disease, report required within 24 hours
- (A) - Drug Resistant Organisms required to be reported within 48 hours
- Others - report required within 48 hours

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**4202 Control of Communicable and Other Disease Conditions**

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119  
(7 Del.C. §903(h) & 29 Del.C. §10119)  
7 DE Admin. Code 3801

**EMERGENCY SECRETARY'S ORDER**

Pursuant to Paragraph M.4 of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, and pursuant to 7 Del.C. §903(h) and 29 Del.C. §10119

Order No: 2020-F-0039

(Extension of Order No: 2020-F-0026)

**RE: 7 DE Admin. Code §§ 3801-16.2; 16.3.1; and 16.4: *Shellfish Aquaculture; Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites***

**3801 Shellfish Aquaculture****AUTHORITY**

Pursuant to Paragraph M.4. of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration"), the Department of Natural Resources and Environmental Control ("Department") is adopting an emergency rule modifying the Inland Bays Shellfish Aquaculture Regulation 7 DE Admin. Code §§ 3801-16.2, 16.3.1 and 16.4: *Shellfish Aquaculture; Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites*. Paragraph M.4. of the Governor's Emergency Declaration authorizes the Secretary of the Department to adopt emergency rules in order "to respond to COVID-19 concerns that implicate the natural resources of the State of Delaware."

**REASON FOR THE EMERGENCY RULE**

The mandatory business closures and reduced business operations resulting from national and state efforts to contain the COVID-19 pandemic have led to a catastrophic decline in commercial demand for seafood and shellfish, including oysters propagated by shellfish aquaculture in the Inland Bays. Delaware's Inland Bays shellfish aquaculture regulations specify timeframes for when aquaculture activity must occur and minimum shellfish planting quantities on shellfish aquaculture leases. Inland Bays shellfish aquaculture lessees subject to these requirements in the year 2020 communicated to the Department that the substantial reduction in the restaurant market for shellfish does not warrant the risk, investment of time, and financial resources to plant and actively cultivate oyster stock for which there is a limited and uncertain market.

Additionally, the mandatory COVID-19 quarantines on interstate travel during the spring of 2020 in Delaware and other states, as well as staffing limits placed on shellfish seed hatching, propagation, and testing facilities in several states, resulted in challenges for the shellfish aquaculture industry in obtaining, transferring, testing, and importing shellfish seed for planting on aquaculture leases. The COVID-19 pandemic is therefore responsible for a catastrophic loss in the shellfish sales market and a disruption of the shellfish seed supply chain. The reduction in the restaurant market for shellfish in the year 2020 will extend into the year 2021, which does not warrant the risk, investment of time, and financial resources to plant and actively cultivate oyster stock for which there is a limited and uncertain market, and the uncertain availability of shellfish seed may limit the ability to plant shellfish. Thus, the extension of Emergency Secretary Order 2020-F-0026 is necessary to ensure the financial and operational viability of the shellfish aquaculture industry and individual lessees and associated shellfish resources.

**EMERGENCY RULE**

It is hereby ordered, this 29th day of December 2020, that 7 DE Admin. Code §§ 3801-16.2; 16.3.1; and 16.4 concerning the conditions for active use of and minimum shellfish planting quantities for Inland Bays shellfish leases are temporarily modified, as shown by strikethrough, as follows:

~~3801-16.2: In the event that an aquaculture lease is determined by the Department not to be active for a period of one (1) year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites.~~

~~3801-16.3.1: After two (2) years (24 months) from the date of lease issuance or transfer, leaseholders must provide evidence to the Department's satisfaction that they annually plant at least 100,000 shellfish per acre leased.~~

~~3801-16.4: Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter.~~

The renewal of this emergency rule shall take effect at **12:00 a.m. on January 1, 2021** and shall remain in effect until **12:00 a.m. on July 1, 2021**.

Shawn M. Garvin  
Secretary

**3801 Shellfish Aquaculture**  
***(Break in Continuity of Sections)***

**16.0 Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites**  
***(Break in Continuity Within Section)***

16.2 ~~In the event that an aquaculture lease is determined by the Department not to be active for a period of one (1) year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites. [Reserved]~~

16.3 An active lease in Delaware's Inland Bays must meet the following conditions:

16.3.1 ~~After two (2) years (24 months) from the date of lease issuance or transfer, leaseholders must provide evidence to the Department's satisfaction that they annually plant at least 100,000 shellfish per acre leased. [Reserved]~~

***(Break in Continuity Within Section)***

16.4 ~~Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter. [Reserved]~~

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**3801 Shellfish Aquaculture**

**Symbol Key**

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**

Statutory Authority: 11 Delaware Code, Section 8605 (11 **Del.C.** §8605)  
1 **DE Admin. Code** 1301

**PUBLIC NOTICE****1301 Delaware Criminal Justice Information System Rules and Regulations**

**Purpose:** In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 86, Section 8605, the Delaware Criminal Justice Information System (DELJIS) Board of Managers proposes to revise its regulations. These proposed regulations are applicable to all users of the Delaware Criminal Justice Information System (CJIS) and to any agency requesting access to CJIS from the Board. The proposed regulations will ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code.

**Notice of Hearing:** A virtual public hearing will be held via Webex. Join the Webex meeting as follows:

When: February 25, 2021 10:00 AM Eastern Time (US and Canada)

Topic: Hearing for Changes to the Delaware Criminal Justice Information System Rules and Regulations

Please click the link below to join the webinar:

<https://stateofdelaware.webex.com/stateofdelaware/k2/j.php?MTID=t0d606f0763dfffb378144c596bb322981>

Passcode: Board

Join by Telephone:

Webex Dial In: 1-408-418-9388

Webex Session Number: 179 785 4859

Webex Password: Board

The hearing is to provide an opportunity for public comment on the proposed Delaware Criminal Justice Information System Rules and Regulations.

**Written Comments:** The DELJIS Board of Managers will receive written comments, suggestions briefs or other

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written material until the close of business, 4:30 p.m., March 12, 2021. Written comments shall be submitted via e-mail to [Marianne.Kennedy@delaware.gov](mailto:Marianne.Kennedy@delaware.gov) or via the USPS to Ms. Marianne Kennedy Chair, DELJIS Board of Managers, 800 Silver Lake Blvd. Suite 101, Dover, DE 19904.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del. C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 738RFA 02-01-21.pdf>

## 1301 Delaware Criminal Justice Information System Rules and Regulations (Break in Continuity of Sections)

### 2.0 Definitions

The definitions set forth in 11 Del.C. §8602 are hereby adopted and incorporated by reference in these regulations. The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise.

*(Break in Continuity Within Section)*

**"Agency Coordinator" or "AC"** means the staff member of a CGA who manages the agreement between the Contractor and agency.

*(Break in Continuity Within Section)*

**"Contracting Government Agency" or "CGA"** means a government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, that enters into an agreement with a private contractor.

**"Contractor"** means a private business, agency or individual that has entered into an agreement for the administration of criminal justice or noncriminal justice functions with a Criminal Justice Agency or a Noncriminal Justice Agency.

*(Break in Continuity Within Section)*

**"Criminal justice information" or "CJI"** is an abstract term used to refer to all CJIS data necessary for Authorized Agencies to perform their mission and enforce the laws, including but not limited to: biographic or biometric data, identity history, person, organization, property, division of motor vehicles information, and/or case or incident history. In addition, CJI refers to the CJIS provided data necessary for Authorized Agencies to make hiring decisions means all Criminal Justice Information System data. The term includes: criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

*(Break in Continuity Within Section)*

**"Victim's copy"** means the automated ~~Victim's~~ victim's copy of a police report created pursuant to 11 Del.C. §9410. For purposes of these regulations, a ~~Victim's~~ victim's copy includes all police report details up to but not including the police narrative or statement.

*(Break in Continuity of Sections)*

### 5.0 Agency Access to CJIS

*(Break in Continuity Within Section)*

5.5 Approval of the agency's application, which may be in whole, in part, or as modified by the Board, shall require a ~~two-thirds~~ majority of the entire Board as prescribed by 11 Del.C. §8610(3).

5.6 Upon approval of the agency's application, which may be in whole, in part, or as modified by the Board, the agency shall enter into a user's agreement as prescribed by 11 Del.C. §8614(4), with the State Bureau of Identification (SBI) pursuant to 11 Del.C. ~~§8514~~ §8611.

### 6.0 Responsibilities of Authorized Agencies

*(Break in Continuity Within Section)*

- 6.10 Authorized Agencies are required to follow the Records Retention and Destruction procedures provided in Section ~~7.0~~ 15.0 of this regulation, that require CJIS, NCIC, NICS, or Triple-I information be disposed of securely. Whether the information is in a physical form (printout) or an electronic form (hard drive, flash drive, etc.) the information must be disposed of in such a way that unauthorized people cannot retrieve it. For most agencies, this means ensuring printed information is shredded onsite by the user.

## ~~7.0~~ CJIS Records Retention and Destruction

- ~~7.1 All information retrieved via CJIS, NCIC, NICS, or Triple-I is highly confidential and shall be afforded security to prevent unauthorized access to or use of that data. To prevent the misuse or improper dissemination of information, any printed information must be immediately destroyed after its intended use. Documents stored in electronic form (hard drive, flash drive, etc.) must be disposed of in such a way that unauthorized people cannot retrieve it. Under no circumstances should printed information be maintained in any agency files or records, including, without limitation, in personnel files.~~
- ~~7.2 Printed information shall be destroyed by shredding as follows:~~
- ~~7.2.1 In-state information, including CJIS information, may be shredded onsite or delivered to the Delaware Public Archives for shredding. Regardless of who destroys the records, they must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).~~
- ~~7.2.2 Out-of-state information, including NCIC, NICS, or Triple-I information, must be shredded onsite and witnessed or carried out by authorized personnel. Paper shredding service providers are prohibited from shredding printed information offsite, but may conduct agency supervised onsite shredding. Regardless of who destroys the records, they must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).~~
- ~~7.3 Electronic information shall be destroyed as follows:~~
- ~~7.3.1 The agency shall sanitize, that is, overwrite at least three times or degauss electronic media prior to disposal or release for reuse by unauthorized individuals. Inoperable electronic media shall be destroyed (cut up, shredded, etc.). The agency shall maintain written documentation of the steps taken to sanitize or destroy electronic media. Agencies shall ensure the sanitization or destruction is witnessed or carried out by authorized personnel and follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).~~

## ~~7.0~~ Responsibilities of a Contracting Government Agency (CGA) and the Contractor

- ~~7.1 Responsibilities of a Contracting Government Agency (CGA)~~
- ~~7.1.1 CGA is subject to the CJIS Security Addendum and shall appoint an Agency Coordinator (AC).~~
- ~~7.1.2 The AC shall be responsible for the supervision and integrity of the system, training and continuing education of employees and operators, scheduling of initial training and testing, and all required reports by DELJIS.~~
- ~~7.1.3 The AC shall:~~
- ~~7.1.3.1 Understand the communications, records capabilities, and needs of the Contractor that is accessing federal and state records through or because of its relationship with the CGA.~~
- ~~7.1.3.2 Receive information from the CGA (e.g., system updates) and disseminate it to appropriate Contractor employees.~~
- ~~7.1.3.3 Maintain up-to-date records of the Contractor's employees who access the system, including name, date of birth, social security number, date fingerprint card submitted, date~~

security clearance issued, and date initially trained, tested, certified or recertified (if applicable).

7.1.3.4 Ensure the training of Contractor personnel.

7.1.3.5 The AC must not permit unauthorized Contractor employees to access CJJ or systems supporting CJJ where access to CJJ can be gained.

7.1.3.6 Where appropriate, ensure compliance by the Contractor with NCIC validation requirements.

7.1.3.7 Provide completed applicant fingerprint cards on each Contractor employee who accesses the system, whether direct or indirect, to the CGA for criminal background investigation prior to such employee accessing the system.

7.13.8 Any other responsibility for the AC promulgated by the DELJIS Board of Managers.

## 7.2 Responsibilities of the Contractor

7.2.1 Contractors must hold themselves to the highest ethical standards and must conduct themselves in a manner that will ensure the security, integrity, and confidentiality of the information contained within CJIS.

7.2.2 Contractors shall not access information contained within CJIS for any reason other than an authorized business related reason.

7.2.3 Contractors agree to comply with Chapters 85 and 86 of Title 11 of the Delaware Code and these regulations.

7.2.4 Contractors must annually acknowledge that they have read and understand these regulations.

7.2.5 Contractors must complete DELJIS training prior to becoming an Authorized User. The DELJIS Training Supervisor may approve temporary or conditional access to CJIS by a Contractor before completing DELJIS training.

7.2.6 Contractors are required to follow the Records Retention and Destruction procedures provided in Section 15.0, that require CJIS, NCIC or NICS information be securely disposed of.

7.2.7 Contractors who improperly access or become aware of improper access of CJIS by another user, or by any other entity, shall immediately report the violation to the CGA, or directly to the DELJIS Security Manager or designee, and shall cooperate with and assist in the conduct of any administrative investigation pursuant to Section 12.0 of this regulation.

7.2.8 Contractors who have been arrested, charged, convicted of a criminal offense, a serious motor vehicle offense, or a violation in any jurisdiction shall notify the CGA or designee within 24 hours of the arrest, charge, or conviction.

7.2.9 Contractors must annually read and submit a Department of Technology and Information Acceptable Use Policy to DELJIS.

7.3 Indirect Access by Contractors. The CGA may only share CJIS information with a Contractor orally or via a secured and encrypted email, such as egress. Such email shall disable the ability of the Contractor to forward or print the information.

## 8.0 **User Access to CJIS**

8.1 To determine if a user credential should be granted to an individual, the Executive Director or designee may consider whether the individual has:

***(Break in Continuity Within Section)***

8.1.3 An active Protection from Abuse Order or Protection Order entered against ~~him/her~~ the individual;

***(Break in Continuity Within Section)***

8.2 Denial Procedure

8.2.1 The Executive Director or designee makes the initial determination to deny access. In the event that the Executive Director cannot act based on the conflict of interest provisions in the State Code of Conduct set forth in 29 Del.C. §5806(b), the Board Chairperson shall act as the designee.

***(Break in Continuity of Sections)***

**10.0 Suspension of CJIS Access for Any Arrest or Criminal Offense of an Authorized User**

- 10.1 Upon notification or discovery of an arrest for a criminal offense, violation, or serious motor vehicle offense, the Executive Director or designee will make the initial determination if the charge warrants a temporary suspension of the Authorized User's credentials. In the event that the Executive Director cannot act based on the conflict of interest provisions in the State Code of Conduct set forth in 29 Del.C. §5806(b), the Board Chairperson shall act as the designee.

***(Break in Continuity Within Section)***

- 10.6 Effect of Failure to Timely Request a Hearing within Fifteen (15) Days. If a user fails to timely request a hearing, the Board will review a summary of the matter during a regularly scheduled meeting of the Board. The DELJIS Security Manager or designee will notify the user in writing by email, fax, or U.S. Mail of the date, time, and location of the meeting. During the meeting, the DELJIS Security Manager or designee will summarize the evidence in support of the notice. The Board may affirm, modify, or reverse, in whole or in part, any decision to temporarily suspend, revoke, reject, or deny access to CJIS, and may order that such suspension, revocation, rejection, or denial become permanent without further notice.

**11.0 Suspension of CJIS Access for Improper Access or Breach**

- 11.1 Upon notification or discovery of any violation involving Improper Access or Breach, the Executive Director or designee will authorize an administrative investigation pursuant to Section 12.0 of this regulation. The Executive Director or designee will also make an initial determination as to whether the apparent violation warrants a temporary suspension of the Authorized User's credentials. In the event that the Executive Director cannot act based on the conflict of interest provisions in the State Code of Conduct set forth in 29 Del.C. §5806(b), the Board Chairperson shall act as the designee.

**12.0 Procedure for Conducting Administrative Investigations of Improper Access or Breach by an Authorized User**

- 12.1 No Authorized User ~~shall~~ may refuse to cooperate in the administrative investigation of a suspected violation or breach, whether such investigation is conducted by SBI or DELJIS. Refusal to cooperate ~~shall~~ may result in a permanent suspension of the Authorized User.
- 12.2 An SBI investigator will conduct an administrative investigation of any Authorized User who is an employee, intern, extern, contractor, volunteer, or other individual or group of individuals acting on behalf of the Delaware State Police (DSP). DELJIS will work with the SBI investigator to explain the CJIS system functionality and screen access, if needed. The results of the administrative investigation shall be submitted to the Executive Director.
- 12.3 A Pursuant to 29 Del.C. §8607, a DELJIS investigator will serve as the SBI designee to conduct any administrative investigation for all Authorized User's excluding any Authorized User of DSP.

***(Break in Continuity Within Section)***

- 12.14 Effect of Failure to Timely Request a Hearing within Fifteen (15) Days. If a user fails to timely request a hearing, the Board will review a summary of the matter during a regularly scheduled meeting of the Board. The DELJIS Security Manager or designee will notify the user in writing by email, fax, or U.S. Mail of the date, time, and location of the meeting. During the meeting, the DELJIS Security Manager or designee will summarize the evidence in support of the notice. The Board may affirm, modify, or reverse, in whole or in part, any decision to temporarily suspend, revoke, reject, or deny access to CJIS, and may order that such suspension, revocation, rejection, or denial become permanent without further notice.

***(Break in Continuity of Sections)***

**14.0 Sanctions**

- 14.1 If the Board determines there has been a violation of Title 11, Chapter 85 or 86 or these regulations by an Authorized Agency or Authorized User, it may impose any of the following ~~sanction(s)~~ sanctions, singularly or in combination:

*(Break in Continuity Within Section)*

- 14.2 Failure to comply with any imposed sanctions will may result in additional sanctions, up to and including permanent suspension.

## **15.0 CJI Records Retention and Destruction**

- 15.1 All information retrieved via CJIS, NCIC, NICS, or Triple-I is highly confidential and shall be afforded security to prevent unauthorized access to or use of that data. To prevent the misuse or improper dissemination of information, any printed information must be immediately destroyed after its intended use. Documents stored in electronic form (hard drive, flash drive, etc.) must be disposed of in such a way that unauthorized people cannot retrieve it. Under no circumstances should printed information be maintained in any agency files or records, including, without limitation, in personnel files.
- 15.2 Printed information shall be destroyed by shredding as follows:
- 15.2.1 In-state information, including CJIS information, may be shredded onsite or delivered to the Delaware Public Archives for shredding. Regardless of who destroys the records, they must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).
- 15.2.2 Out-of-state information, including NCIC, NICS, or Triple-I information, must be shredded onsite and witnessed or carried out by authorized personnel. Paper shredding service providers are prohibited from shredding printed information offsite, but may conduct agency supervised onsite shredding. Regardless of who destroys the records, they must follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).
- 15.3 Electronic information shall be destroyed as follows:
- 15.3.1 The agency shall sanitize, that is, overwrite at least three times or degauss electronic media prior to disposal or release for reuse by unauthorized individuals. Inoperable electronic media shall be destroyed (cut up, shredded, etc.). The agency shall maintain written documentation of the steps taken to sanitize or destroy electronic media. Agencies shall ensure the sanitization or destruction is witnessed or carried out by authorized personnel and follow the destruction protocols used by Delaware Public Archives in accordance with 29 Del.C. §504(b) and U.S. Department of Justice, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy at §5.8 (Media Protection).

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**1301 Delaware Criminal Justice Information System Rules and Regulations**

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## **DELAWARE STATE FIRE PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))  
1 DE Admin. Code 701

### **PUBLIC NOTICE**

#### **701 Administration and Enforcement**

The Delaware State Fire Prevention Commission, pursuant to 16 Del. C. § 6604(1), proposes to revise regulation 701 by updating language in Chapter 1, Section 3.1.4 to be consistent with the provisions of the existing regulations and the codes and standards of the National Fire Protection Association (NFPA), as adopted and/or

modified by these Regulations for building rehabilitation of existing buildings; changed minor wording in Chapter 3, Section 3.0 Permit Required 3.1.5 change more than 50 to 50 or more; Chapter 4, Submittal of Plans 2.0 - Requirement for Sealed or Signed Plans. Update 2.1 & 2.2 in its entirety to be more consistent with the requirements of the building officials; Chapter 7 Adopted Codes and Standards - Update 120 plus current adopted NFPA codes and standards to the most recent version, delete four adopted NFPA codes and standards no longer in use and add three new NFPA codes and standards. Update and delete the current modifications of NFPA codes and standards to the recent proposed adopted codes and standards.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

**\*Please Note:**

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 743RFA 02-01-21.pdf>

(2) **Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

**701 Administration and Enforcement**

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## **DELAWARE STATE FIRE PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))  
**1 DE Admin. Code 702**

### **PUBLIC NOTICE**

#### **702 Fire Protection in Building Construction**

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 702 by: removing inconsistencies with current regulations and National Fire Prevention Association standards 13, 13R & 13D to better clarify where sprinklers are required to be installed; by correcting spelling and other typographical errors; by removing outdated NFPA codes and standards and replace with updated NFPA codes and standards; changing hydrant spacing for one and two-family detached dwellings from 1,000 feet on center to 800 feet on center to be consistent with the rest of the requirements in Fire Flow Table 2; and making other changes as detailed below.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

**\*Please Note:**

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 744RFA 02-01-21.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

**702 Fire Protection in Building Construction**

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## DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))  
1 DE Admin. Code 703

### PUBLIC NOTICE

#### **703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers**

The Delaware State Fire Prevention Commission, pursuant to 16 Del. C. § 6604(1), proposes to revise regulation 703 by deleting an incorrect reference in the definition of "Testing" in Chapter 1, Section 2.0.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

#### \*Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 745RFA 02-01-21.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

**703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems**

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## DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))  
1 DE Admin. Code 704

### PUBLIC NOTICE

#### **704 Hazardous Processes and Operations**

The Delaware State Fire Prevention Commission, pursuant to 16 Del. C. § 6604(1), proposes to revise regulation 704 by replacing the reference to 16 Del. C. § 6611 with 16 Del. C. § 6614 in Chapter 2, Section 5.1.8.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del. C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 745aRFA 02-01-21.pdf>

## 704 Hazardous Processes and Operations

### Chapter 1 Reduced Ignition Propensity Cigarettes

This Chapter Has Been Reserved.

### Chapter 2 Application for Permit for Public Display of Fireworks

#### 1.0 ~~Scope.~~ Scope

- 1.1 This Regulation is intended to be supplemental in nature to 16 **Del.C.** Ch. 69.
  - 1.1.1 Pursuant to 16 **Del.C.** Ch. 69, no person shall store, sell, offer or expose for sale, or have in possession with intent to sell or to use, discharge or cause to be discharged, ignited, fired or otherwise set in action within this State, any fireworks, firecrackers, rockets, sparklers, torpedoes, Roman candles, fire balloons or other fireworks or substances of any combination whatsoever designed or intended for pyrotechnic display except as otherwise provided for in this Regulation.
  - 1.1.2 This Regulation provides the necessary means for the State Fire Marshal to carry out the requirements of 16 **Del.C.** Ch. 69 with regards to the location of a public fireworks display; the competency of a person or persons who will set-up, handle, ignite, light, or otherwise handle the fireworks; and storage and handling of the fireworks, prior to the actual display, for the safety of those at, in, or near the display area and the protection of properties in the general area of the display.

#### 2.0 ~~Application For for Permit For for Public Display Of Fireworks.~~ Application for Permit for Public Display of Fireworks

- 2.1 Any association or company desiring to hold a public display of fireworks may apply to the State Fire Marshal for a permit to hold such a display if application is made 30 days prior to the date of holding such a display. [16 **Del.C.** §6903 (a)]
- 2.2 Such application for a permit for a public display of fireworks shall set forth:
  - 2.2.1 The name and address of the organization sponsoring the ~~display.~~ display;
  - 2.2.2 The name, address and telephone number of an individual from the sponsoring organization who will be the contact person for the Office of the State Fire ~~Marshal.~~ Marshal;
  - 2.2.3 The name, address, phone number, and State Fire Marshal license number of the person in charge of firing the ~~display.~~ display;
  - 2.2.4 The date and time of day at which the display is to be ~~held.~~ held;
  - 2.2.5 The exact location planned for the ~~display.~~ display;
  - 2.2.6 The number and kind of fireworks to be ~~discharged.~~ discharged;
  - 2.2.7 The manner and place of storage of such fireworks prior to the ~~display.~~ display;
  - 2.2.8 The signature of the contact person from the sponsoring ~~organization.~~ organization; and
  - 2.2.9 The name, address, phone number, and signature of the fire chief of the local fire department certifying that he has been contacted by the sponsoring organization and that the fire department will provide fire protection on the date and time of the display.
- 2.3 The application for a permit for a public display of fireworks shall be accompanied by the following:
  - 2.3.1 A certificate of insurance issued by a bona fide insurance company licensed by the State Insurance Commissioner showing a minimum of \$1,000,000 liability insurance per event pursuant to 16 **Del.C.** §6903 (c).
  - 2.3.2 A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways, streets, roads, the lines

behind which the audience or spectators will be restrained, and the location of all nearby trees, telegraph, or telephone lines or other overhead obstructions.

2.3.3 A check in the amount prescribed in these Regulations and made payable to the ~~STATE OF DELAWARE~~ State of Delaware.

2.4 The certificate of insurance shall list the specific date and time of the planned display.

2.5 No permit shall be issued until the site is inspected by the State Fire Marshal. A site inspection shall cover all regulations in this Chapter, 16 ~~Del.C.~~, Del.C. Chapter 69, the *Code for Fireworks Display*, NFPA 1123 and the *Standard for the Use of Pyrotechnics before a Proximate Audience*, NFPA 1126. A permit shall only be issued after a satisfactory site inspection has been completed.

### **3.0 Conduct of ~~Display~~. Display**

#### **3.1 General Requirements.**

3.1.1 The discharge, failure to fire, faulty wiring or fallout of any fireworks, or other objects shall not endanger persons, buildings, apartments, structures, forests, or brush nor in any case will the point at which the fireworks are to be fired be less than 200 feet from the nearest permanent building, public highway, railroad, or other means of travel or 50 feet from the nearest above ground telephone or telegraph line, tree, or other overhead obstruction. In no case shall a display be fired within 500 feet of a school, theater, church, hospital, or similar institution.

3.1.2 Spectators at a display of fireworks shall be restrained behind lines or barriers designated by local authorities but in no case less than 200 feet from the point at which the fireworks are to be discharged. Only authorized persons and those in actual charge of the display shall be allowed inside those lines or barriers during the unloading, preparation, or firing of the fireworks.

3.1.3 All fireworks that fire a projectile shall be so set up that the projectile will go into the air as nearly as possible in a vertical direction, provided that where such fireworks are to be fired beside a lake or other large body of water, they may be directed in such a manner that the falling residue from the deflagration will fall into the said body of water.

3.1.4 Any fireworks that remain unfired after the display is concluded shall be immediately disposed of or removed in a manner safe for the particular type of fireworks. The debris from the discharged fireworks shall be properly disposed of by the operator before he leaves that premises. The operator, upon the conclusion of the display, shall make a complete and thorough search for any unfired fireworks or pieces which have failed to fire or function and dispose of them in a safe manner. Such search shall be instituted at the earliest possible time following the conclusion of the display but in no event later than the first period of daylight which follows.

3.1.5 No fireworks display shall be held during any windstorm in which the wind reaches a velocity of more than 20 miles per hour.

3.1.6 All fireworks articles and items at places of display shall be stored in such a manner and in a place secure from fire, accidental discharge, and theft in a manner approved by the State Fire Marshal.

3.1.7 Display operators and assistants shall use only flashlights or electric lighting for artificial illumination.

3.1.8 No smoking or open flames shall be allowed in the storage or display area. Signs to this effect shall be conspicuously posted.

3.1.9 No person shall handle or be involved in the firing of fireworks after the consumption of alcoholic beverages or under the influence of narcotics or drugs which could adversely affect judgment, movements, or stability.

3.1.10 The State Fire Marshal shall have the authority to apply any provision from the Code for Fireworks Display, NFPA 1123 and the Standard for the Use of Pyrotechnics before a Proximate Audience, NFPA 1126, as adopted ~~and/or~~ or modified by these Regulations, as the standards for any provision not specifically covered in this Chapter or in 16 ~~Del.C.~~, Del.C. Ch. 69.

3.1.11 All fireworks displays shall be under the immediate supervision of a person so licensed as an operator of public fireworks display as called for in §5.0 of this Chapter.

# PROPOSED REGULATIONS

- 3.1.12 The provisions of ~~§ subsection~~ 3.1.11 shall apply from the time that the fireworks arrive at the display site, and until the completion of the display, removal of all remaining fireworks from the site and the removal of all debris.
- 3.1.13 The person so licensed under this Chapter, who is supervising a display site, shall be responsible for all aspects of the conduct of the display and for all requirements under which the display permit is issued.

## 4.0 ~~Fire Protection Required-~~ **Required**

- 4.1 The sponsoring organization shall arrange with the local fire department to provide fire protection for the display.
- 4.2 The level of such fire protection will be decided by the chief of the local fire department.

## 5.0 ~~Operator Qualifications-~~ **Qualifications**

- 5.1 Operator License Required.
- 5.1.1 All operators of public displays of fireworks and persons lighting or shooting fireworks shall be licensed by the State Fire Marshal.
- 5.1.2 Anyone desiring to be licensed as an operator of a public display of fireworks shall submit an application for licensing to the State Fire Marshal.
- 5.1.3 An application fee for a license to operate a public display of fireworks shall be as prescribed in these Regulations and shall accompany the application.
- 5.1.4 Applicants for licensing as operators and persons lighting or firing fireworks shall successfully complete a written or oral examination of laws, regulations, and safety practices, administered by the Office of the State Fire Marshal.
- 5.1.5 All operators of public displays shall be at least 21 years of age. All assistants shall be at least 18 years of age.
- 5.1.6 Any license issued to an operator or persons lighting or firing fireworks for public display shall be valid for one year and renewed annually.
- 5.1.7 Fees for renewal of licenses shall be as prescribed in these Regulations.
- 5.1.8 Any operator, individual, or persons lighting or firing fireworks for public display without having obtained an individual license from the Office of the State Fire Marshal shall be charged in accordance with 16 ~~Del.C. §6614~~ §6614.
- 5.1.9 Any individual or person licensed by the State Fire Marshal pursuant to this Chapter who endangers life or property in the conduct of fireworks or pyrotechnics firing or shooting shall have his license suspended or revoked upon a finding of fact by the State Fire Marshal.
- 5.1.10 Any persons so licensed under the provisions of this Chapter may have his license suspended or revoked for infractions or non-compliance with any of the provisions called for in this Chapter.
- 5.1.11 Any person, who has their license suspended or revoked under the provisions of this Chapter or any other Chapter of these regulations, may appeal the action of suspension or revocation to the Delaware State Fire Prevention Commission under the provisions set forth in Regulation 701, Chapter 1.

## Chapter 3 Explosives, Ammunition, Blasting Agents

### 1.0 ~~General-~~ **General**

- 1.1 In addition to applicable sections of 16 ~~Del.C., Del.C.~~ as well as all applicable sections of these Regulations, the following specific requirements shall apply.
- 1.2 The licensed blaster whose name appears on the application for a permit to use explosives shall be the individual on the site, responsible for the setting up and shooting of any explosive charges.

- 1.3 The individual, company, firm, business or corporation to whom a permit for use of explosive materials is issued to shall notify the Office of the State Fire Marshal the morning of each day when blasting operations will be done at a location permitted by the Office of the State Fire Marshal.
- 1.4 No permit shall be issued until the site is inspected by the State Fire Marshal. A site inspection shall cover all regulations in this Chapter, 16 ~~Del.C.~~, Del.C., Chapter 70, and the *Explosive Materials Code*, N.F.P.A. 495. A permit shall only be issued after a satisfactory site inspection has been completed.

## 2.0 ~~Records.~~ Records

- 2.1 A record of each blast shall be kept. All records shall be retained for at least three years following the year in which the record is made and shall be available for inspection by the Office of the State Fire Marshal and shall contain the following minimum data:
  - 2.1.1 Name of company or contractor;
  - 2.1.2 Location, date, and time of blast;
  - 2.1.3 Names, signature, and license number of blaster;
  - 2.1.4 Type of material blasted;
  - 2.1.5 Number of holes, burden, and spacing;
  - 2.1.6 Diameter and depth of holes;
  - 2.1.7 Types of explosives used;
  - 2.1.8 Total amount of explosives used;
  - 2.1.9 Maximum amount of explosives per delay period of eight (8) milliseconds or greater;
  - 2.1.10 Method of firing and type of circuit;
  - 2.1.11 Direction and distance in feet of nearest dwelling house, public building, school, church, commercial, or institutional building neither owned nor leased by the person conducting the blasting;
  - 2.1.12 Scaled distance, DS;
  - 2.1.13 Weather conditions;
  - 2.1.14 Direction of wind;
  - 2.1.15 Height or length of stemming;
  - 2.1.16 Were mats used; and
  - 2.1.17 Type of delay electric blasting caps used and delay periods used.
- 2.2 The above log shall be in a bound type book and shall be kept on each job site and date entered with each shot. The log shall be made immediately available to the State Fire Marshal or authorized designee upon request.
- 2.3 It shall be the responsibility of the licensed blaster whose name appears on the application for a permit to use explosives to keep, record, or maintain the records as required in this section.

## 3.0 ~~Magazine Construction.~~ Construction

- 3.1 All magazine doors shall be constructed of one quarter inch (1/4") steel plate and lined with two inches (2") of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting, or bolting (nuts on inside door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.
- 3.2 Lock Protection. Each door shall be equipped with two mortise locks; or with two padlocks fastened in separate hasps and staples; or with a combination of mortise lock and padlock; or with a mortise lock that requires two keys to open; or a ~~three-point~~ three-point lock. Locks shall be tumbler proof. All padlocks shall be protected with one quarter inch (1/4") thick steel caps, constructed so as to prevent sawing or lever action on the locks or hasps.

## 4.0 ~~Bond/Certificate of Insurance Required.~~ Required

Before a permit to do blasting as required by these Regulations shall be issued, the applicant for such permit shall file a surety bond deemed adequate in each case by the State Fire Marshal or shall provide a Certificate of Insurance from his agent or carrier showing that the applicant is insured to cover any foreseeable accident, damage, or injury from such use of hazardous material. Such bond or Certificate of Insurance shall be proof of financial responsibility for the payment of any damages arising from the permitted blasting.

## 5.0 Reporting Deliveries ~~and/or Sales.~~ or Sales

All dealers, suppliers, distributors, and persons otherwise involved in the transfer or possession of explosives shall report quarterly to the State Fire Marshal on forms provided by the State Fire Marshal, the amounts, kinds, date and place delivered to of all quantities of materials that are encompassed in these Regulations.

## 6.0 ~~Transportation.~~ Transportation

A permit is required from the State Fire Marshal for the transportation of explosives within the State of Delaware. No permit shall be issued until the vehicle is inspected by the State Fire Marshal. The vehicle inspection shall cover all regulations in this Chapter, 16 ~~Del.C.~~, Del.C. Ch. 71 and the *Hazardous Materials Transportation Act*, as provided in 29 Del.C. §8223 through §8230.

## Chapter 4 Amusement Ride Safety

### 1.0 ~~Seepe.~~ Scope

- 1.1 This Chapter is intended to be supplemental in nature to 16 ~~Del.C.~~, Del.C. Ch. 64.
- 1.2 This Chapter will provide the necessary means for the State Fire Marshal to carry out the enforcement action at the specific set-up or operational sites of amusement rides in promoting life safety.

### 2.0 ~~Application For for Permit For for Amusement Rides~~

- 2.1 Any association or company desiring to operate a public amusement shall apply to the State Fire Marshal for a permit to operate such amusement at least 7 days prior to the first date of operating the amusement.
- 2.2 Such application for a permit for a public amusements shall set forth:
  - 2.2.1 The name and address of the organization sponsoring the ~~amusements.~~ amusements;
  - 2.2.2 The name, address and telephone number of an individual from the sponsoring organization who will be the contact person for the Office of the State Fire ~~Marshal.~~ Marshal;
  - 2.2.3 The times of day and dates when the amusements will open to the ~~public.~~ public;
  - 2.2.4 The exact location planned for the amusements. amusements; and
  - 2.2.5 The signature of the contact person from the sponsoring organization.

### 3.0 ~~Electrical Inspection Required.~~ Required

- 3.1 Each time an amusement ride as defined in 16 ~~Del.C.~~, Del.C. Ch. 64, is set-up, assembled, or otherwise made ready for public use or occupancy or in any way in which a person may come in contact with the amusement ride, an electrical inspection shall be conducted by a recognized electrical inspection agency, as certified by the Delaware State Board of Electrical Examiners.
- 3.2 The inspection shall determine that all provisions of the National Electric Code, NFPA 70, as adopted ~~and/or or~~ modified by these Regulations, have been complied with.
- 3.3 A report shall be issued to the State Fire Marshal from the electrical inspection agency containing the following information:
  - 3.3.1 Name of ride owner;
  - 3.3.2 Name of ride;

3.3.3 State Fire Marshal ride identification number;

3.3.4 Date of inspection;

3.3.5 Location of inspection; and

3.3.6 Approval or non-approval for compliance.

3.4 An approved report shall be received in the Office of the State Fire Marshal prior to operation of the ride.

3.5 It is the responsibility of the ride owner to arrange for the electrical inspection and to file the required approval report.

#### 4.0 **Verification and Validation of Insurance ~~Policies~~ Policies**

4.1 All insurance policies and certificates of insurance issued under the requirements of 16 ~~Del.C.~~ **Del.C.** Ch. 64 shall be reviewed prior to acceptance by the State Fire Marshal by the Insurance Commissioner's Office to ensure that the terms and covenants of the policies and certificate of insurance meet the requirements of the statute.

4.2 The State Fire Marshal may not accept the insurance policy or certificate of insurance until such action as called for in § subsection 4.1 has been completed by the Insurance Commissioner's Office.

4.3 Any such insurance policy or certificate of insurance found not to be in compliance with the statutory require will not be accepted by the State Fire Marshal and the individual or firm so submitting the insurance policy or certificate of insurance shall be notified by registered mail.

#### 5.0 **Site Inspection Required**

No permit shall be issued until the site is inspected by the State Fire Marshal. A site inspection shall cover all regulations in this Chapter and 16 ~~Del.C.~~ **Del.C.** Ch. 64. A permit shall only be issued after a satisfactory site inspection has been completed.

#### 6.0 **Handling of ~~Complaints~~ Complaints**

6.1 Whenever the State Fire Marshal has reason to believe that continued operation of an amusement ride constitutes a threat to life safety, the State Fire Marshal shall have the authority to issue a summary abatement in accordance with the provisions of Regulation 701, Chapter 1.

6.2 Such summary abatement shall remain in effect until the Office of the State Fire Marshal is satisfied that the hazard to life has been corrected.

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## DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))  
1 **DE Admin. Code** 705

### PUBLIC NOTICE

#### 705 General Fire Safety

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 705 by: replacing September 1, 2015 with March 11, 2016 in Chapter 1, subsection 15.3; updating the perimeter access requirements in Chapter 5, subsection 3.5; updating the requirement for parking between building and perimeter access in Chapter 5, subsection 3.5.2; and by updating figure 6.1 in Chapter 5.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

**\*Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 751RFA 02-01-21.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

**705 General Fire Safety**

## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 Del. C. Section 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on January 5, 2021, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On January 12, 2021, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period beginning on February 1, 2021 to March 3, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on March 9, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB March 3, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del. C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 752RFA 02-01-21.pdf>

#### 501 Harness Racing Rules and Regulations

*(Break in Continuity of Sections)*

#### 6.0 Types of Races

*(Break in Continuity Within Section)*

#### 6.3 Claiming Races

*(Break in Continuity Within Section)*

#### 6.3.3 Claiming Procedure

*(Break in Continuity Within Section)*

- 6.3.3.15 No horse claimed out of a claiming race shall be eligible to start in any race in the name or interest of the prior owner for 30 days, nor shall such horse remain in the same stable or under the care or management of the prior owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race. Further, such claimed horse shall only be eligible to enter in races in the state of Delaware for a period of 60 days following

~~the date of the claim, unless released in writing by an authorized representative of the Association~~ the DHRC Administrator and Presiding Judge. A written release shall be granted in the sole discretion of the DHRC Administrator and Presiding Judge only upon a finding that the transfer does not have the potential to harm the local pool of available racing stock.

*(Break in Continuity of Sections)*

**8.0 Veterinary Practices, Equine Health Medication**

*(Break in Continuity Within Section)*

**8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment**

*(Break in Continuity Within Section)*

- 8.9.8 *Exercise Prior to Testing*-In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the ~~Commission Veterinarian~~ Administrator of Racing or presiding judge Presiding Judge, or tested post race.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**501 Harness Racing Rules and Regulations**

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**DEPARTMENT OF EDUCATION**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 183 and 3402(c) (14 **Del.C.** §§183 and 3402(c))

14 **DE Admin. Code** 1203

**PUBLIC NOTICE**

**Educational Impact Analysis Pursuant to 14 Del.C. §122(d)**

**1203 Scholarship Incentive Program (SCIP)**

**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

Pursuant to 14 **Del.C.** §§ 183 and 3402(c), the Delaware Department of Education ("Department"), acting in cooperation with the Delaware Higher Education Office ("DHEO"), seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1203 Scholarship Incentive Program. In accordance with 14 **Del.C.** §§181(15) and 3402(a), the DHEO administers the Scholarship Incentive Program set forth in subchapter II of 14 **Del.C.** Ch. 34. 14 **DE Admin. Code** 1203 outlines the eligibility criteria and application process for the Scholarship Incentive Program. The proposed amendments include an updated definition of academic merit to align with federal standards for receiving financial aid at a college or university and an update to the application process to reflect a new online application.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 3, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the

address above.

### **C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. By statute (14 **Del.C.** §3411), the program's purpose is to provide financial aid to Delaware residents with demonstrated financial need so that within the limits of the fiscal capabilities of the State they shall not be denied an opportunity for a college education because of financial need; provide a financial incentive for higher academic achievement for students who qualify to receive such scholarships; and encourage qualified Delaware students to pursue courses of graduate and professional education when such courses are unavailable in state-supported institutions and when such pursuit is deemed to be in the best interest of the State. The amended regulation is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. By statute (14 **Del.C.** §3411), the program's purpose is to provide financial aid to Delaware residents with demonstrated financial need so that within the limits of the fiscal capabilities of the State they shall not be denied an opportunity for a college education because of financial need; provide a financial incentive for higher academic achievement for students who qualify to receive such scholarships; and encourage qualified Delaware students to pursue courses of graduate and professional education when such courses are unavailable in state-supported institutions and when such pursuit is deemed to be in the best interest of the State. The amended regulation is not designed to help improve student achievement as measured against state achievement standards. The amended regulation is not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. By statute (14 **Del.C.** §3411), the program's purpose is to provide financial aid to Delaware residents with demonstrated financial need so that within the limits of the fiscal capabilities of the State they shall not be denied an opportunity for a college education because of financial need; provide a financial incentive for higher academic achievement for students who qualify to receive such scholarships; and encourage qualified Delaware students to pursue courses of graduate and professional education when such courses are unavailable in state-supported institutions and when such pursuit is deemed to be in the best interest of the State. The amended regulation is not designed to help improve student achievement as measured against state achievement standards. The amended regulation is not designed to help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. By statute (14 **Del.C.** §3411), the program's purpose is to provide financial aid to Delaware residents with demonstrated financial need so that within the limits of the fiscal capabilities of the State they shall not be denied an opportunity for a college education because of financial need; provide a financial incentive for higher academic achievement for students who qualify to receive such scholarships; and encourage qualified Delaware students to pursue courses of graduate and professional education when such courses are unavailable in state-supported institutions and when such pursuit is deemed to be in the best interest of the State. The amended regulation is not designed to help ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. The amended regulation is not designed to preserve the necessary authority and flexibility of decision making at the local board and elementary and secondary school levels.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates

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upon decision makers at the local board and school levels? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. The amended regulation is not designed to place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and elementary and secondary school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? Pursuant to 14 **Del.C.** §§181(15) and 3402(a), the DHEO administers the Scholarship Incentive Program set forth in subchapter II of 14 **Del.C.** Ch. 34.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation concerns a scholarship program for post-secondary education that was created by the General Assembly. The amended regulation is not designed to be consistent with and not an impediment to the implementation of state educational policies addressing achievement in core academic subjects at the elementary and secondary levels.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? By statute (14 **Del.C.** §3402(b)), DHEO is authorized to award student financial aid from Title 14, Chapter 34 programs, including the Scholarship Incentive Program, subject to the limits of its appropriations for this purpose. The proposed amendments are consistent with the FY21 Appropriations Act (Senate Bill No. 240) that went into effect on June 30, 2020.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del. C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 753RFA 02-01-21.pdf>

## 1203 Scholarship Incentive Program (ScIP)

### 1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and to delineate the application process for the Scholarship Incentive Program (ScIP), pursuant to 14 **Del.C.** §3411.

### 2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning ~~unless the context in which they are used clearly indicates otherwise:~~

**"Academic Record"** means the applicant's unofficial transcript from high school, college, or graduate school for the most recent academic year.

**"Critical Need Area"** means classifications where there is a shortage of persons for employment in a particular field. These classifications are posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.

**"Delaware Higher Education Office (DHEO)"** is **"Delaware Higher Education Office"** or **"DHEO"** means the Department of Education's office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

**"Direct Educational Expenses"** means tuition, mandatory fees, room, board, books, and supplies.

**"Expected Family Contribution (EFC)"** **"Expected Family Contribution"** or **"EFC"** means a number that is calculated using the financial information an applicant provides on his or her the applicant's Free Application for Federal Student Aid (FAFSA) to determine an applicant's eligibility for federal student aid.

# PROPOSED REGULATIONS

~~"Free Application for Federal Student Aid (FAFSA)"~~ **"Free Application for Federal Student Aid"** or **"FAFSA"** means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for a SciP scholarship.

**"Full-Time Student"** means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term and for a graduate program, a minimum of 9 credit hours.

~~"Grade Point Average (GPA)"~~ means the number representing the average value of the accumulated final grades earned in courses over time.

**"Graduate Student"** means a full-time student enrolled in a post-baccalaureate program.

~~"Regionally Accredited Institution"~~ means an institution of higher education accredited by one of the following regional accreditation organizations: Accrediting Commission for Community and Junior Colleges (ACCJC), Higher Learning Commission (HLC), Middle States Commission on Higher Education (MSCHE), New England Association of Schools and Colleges (NEASC-CIHE), Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), or WASC Senior College and University Commission (WSCUC).

**"Resident of the State"** means an applicant who meets the definition of residency as defined in 14 Del.C. §3402(f).

**"Satisfactory Academic Progress"** means that a student is successfully completing coursework according to the standards of the college or university in which the student is enrolled and the student is eligible to continue to receive financial aid.

**"Semester"** means a half-year term in a school or college, typically lasting 15 to 18 weeks.

**"Student Account Access Site"** means the webpage on the DHEO's website where students can access scholarship opportunities.

**"Undergraduate Student"** means a full-time student at a regionally accredited college or university who has not yet earned a bachelor's or equivalent degree.

## 3.0 Application Acceptance and Submission Period

- 3.1 The application acceptance and submission period for the SciP scholarship shall be posted on the DHEO's website by December 1 each calendar year.
  - 3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
  - 3.1.2 Incomplete applications shall not be accepted or processed.
- 3.2 In order for an application to be considered complete, an applicant must:
  - 3.2.1 Complete the FAFSA for the school year in which the scholarship is sought by the state deadline for Delaware that is posted online at [FAFSA.ed.gov](https://fafsa.ed.gov).
  - 3.2.2 ~~Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period~~ Complete an online application through the Student Account Access Site by the last date of the application acceptance period.
    - 3.2.2.1 ~~Notwithstanding subsection 3.2.2 of this regulation, and unless notified otherwise by DHEO, an applicant who is currently enrolled as a senior in a Delaware public or charter school is not required to submit his or her Academic Record to DHEO by mail, fax, or email.~~
  - 3.2.3 ~~Submit the applicant's major and the name of the regionally accredited college or university~~ higher education institution with regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education in which the applicant will be enrolled for the school year in which the scholarship is sought through the Student Account Access Site by the last date of the application acceptance period.
    - 3.2.3.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

- 3.2.3.2 A first time applicant must establish an account and provide ~~his or her~~ the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.3 of this regulation.

#### **4.0 Eligibility**

- 4.1 Applicants must meet the following requirements to be eligible for the ScIP:
- 4.1.1 Be a Resident of the State; and
- 4.1.2 Be a Full-Time Student enrolled in:
- 4.1.2.1 ~~an~~ An undergraduate degree program at a ~~regionally accredited college or university~~ higher education institution with regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education in Delaware; or
- 4.1.2.2 ~~an~~ An undergraduate degree program at a ~~regionally accredited college or university~~ higher education institution with regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education outside of Delaware that is not offered by a publicly assisted college or university in Delaware; or
- 4.1.2.3 a A graduate or professional education degree program at a ~~regionally accredited college or university~~ higher education institution with regional accreditation from an accrediting agency recognized by the U.S. Secretary of Education outside of Delaware that is not offered by a publicly assisted college or university in Delaware and in pursuit of a degree that is deemed in the best interest of the State.
- 4.1.2.3.1 ~~For the purpose of subsection 4.1.2.3 of this regulation, an applicant who is in pursuit of a degree in either a Critical Need Area or for an occupation or industry in which there is a labor shortage as determined by DHEO based on current Delaware Department of Labor projections is in pursuit of a degree that is deemed in the best interest of the State.~~
- 4.1.3 Be making Satisfactory Academic Progress.

#### **5.0 Awards**

- 5.1 DHEO determines the number and amount of scholarships to be awarded annually. The number and amount of awards each year will vary and is based on and subject to DHEO receiving funds appropriated for the ScIP.
- 5.1.1 If DHEO receives funds appropriated for the ScIP, DHEO may allocate up to 80% of the total amount of funds received for awards for eligible Undergraduate Students and up to 20% of the total amount of funds received for awards for eligible Graduate Students provided that DHEO receives applications from both Undergraduate and Graduate Students in a given year.
- 5.2 ~~DHEO shall award scholarships on the basis of financial need and academic merit.~~
- 5.2.1 ~~To determine an applicant's financial need, DHEO will consider:~~
- 5.2.1.1 ~~the applicant's EFC;~~
- 5.2.1.2 ~~the expense of attending the college or university in which the applicant is enrolled; and~~
- 5.2.1.3 ~~the applicant's eligibility for Pell grants and other federal, state, or private grant assistance.~~
- To determine an applicant's financial need for the purpose of ScIP, DHEO will consider the applicant's EFC; the expense of attending the college or university in which the applicant is enrolled; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance.
- 5.2.2 ~~To determine an applicant's academic merit, DHEO will consider the applicant's GPA.~~
- 5.2.2.1 ~~For an applicant who is currently enrolled in high school, the applicant must have an unweighted, cumulative GPA of 2.5 or higher.~~
- 5.2.2.2 ~~For an applicant who is currently enrolled as an Undergraduate Student or Graduate Student, the applicant must have a cumulative GPA of 2.5 or higher.~~

# PROPOSED REGULATIONS

~~5.2.2.3 Notwithstanding subsection 5.2.2 of this regulation, for an applicant who is currently enrolled as a Graduate Student in a degree program in which pass or fail grading is the only option and a GPA is not calculated, the applicant must have passing grades in his or her courses from the previous school year.~~

- 5.3 An award shall be used for, and not in excess of, Direct Educational Expenses.
- 5.4 An award shall not be renewable. Students must submit a new application each school year.
- 5.5 No student may receive more than five annual scholarships for either undergraduate or graduate study.

## 6.0 Award Payment

- 6.1 DHEO shall contact a recipient's college or university to verify the recipient's ~~academic, financial, and financial and~~ enrollment status and to verify that the student is making Satisfactory Academic Progress each Semester prior to the scholarship funds being disbursed.
- 6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.
- 6.3 If a recipient withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policy set forth in 14 **Del.C.** §3402(k).

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1583

### PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 **Del.C.** §122(d)

### 1583 School Psychologist

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1583 School Psychologist. The regulation concerns the requirements for a School Psychologist Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Psychologist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Psychologist Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a School Psychologist Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 4, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

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## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Psychologist Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del. C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 758RFA 02-01-21.pdf>

## 1583 School Psychologist

### 1.0 Content

- 4.1 This regulation shall apply to the ~~requirements for issuance of a School Psychologist Standard Certificate, Certificate~~ pursuant to 14 **Del.C.** §1220(a), ~~for School Psychologist. This certification~~ The School Psychologist Standard Certificate is required for all ~~School Psychologists~~ school psychologists providing services to children ~~within the Delaware public school system in Delaware public schools.~~
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

### 2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~

**"Department"** means the Delaware Department of Education.

**"Educator"** means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

**"Internship"** means a supervised, culminating, comprehensive field experience, completed at or near, the end of formal training, through which school psychology candidates have the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica, as well as to acquire new competencies consistent with training program goals.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Passing Score"** means a minimum score as established by the Standards Board in consultation with the Department and with the approval of the State Board of Education.

**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

**"Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

## 3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a School Psychologist Standard Certificate as a School Psychologist to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and, 2003 and meets the requirements set forth in Section 4.0 of this regulation;
- 3.1.2 Has met the requirements as set forth in 14 ~~DE Admin. Code~~ 1505 Standard Certificate, including any subsequent amendment or revision thereto; and Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school psychologist.
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Psychologist Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

## 4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

- 4.1 ~~An educator shall also have satisfied at least one (1) of the following additional education and internship requirement Options:~~
- 4.1.1 ~~NASP or APA School Psychology Degree:~~
- 4.1.1.1 ~~Has successfully completed an organized graduate level program of study in "School Psychology" offered by a regionally accredited college or university and approved by the National Association of School Psychologists (NASP) or the American Psychological Association (APA), culminating in an Educational Specialist (Ed.S.) degree or its equivalent or a Doctoral degree in School Psychology; and~~
- 4.1.1.2 ~~Has successfully completed a supervised internship.~~
- 4.1.2 ~~NCSP Certificate:~~
- 4.1.2.1 ~~Holds a valid Nationally Certified School Psychologist (NCSP) Certificate from the National Association of School Psychologists (NASP).~~
- 4.1.3 ~~License or certificate from other state:-~~
- 4.1.3.1 ~~Holds a valid and current license or certificate from another state in school psychology.~~
- 4.1 An applicant for a School Psychologist Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.
- 4.1.1 The applicant shall have earned one of following:
- 4.1.1.1 An Educational Specialist (Ed.S.) degree, the equivalent of an Ed.S. degree, or a doctoral degree through a program approved by the National Association of School Psychologists (NASP) at a Regionally Accredited college or university; or
- 4.1.1.2 A doctoral degree in school psychology through a program approved by the American Psychological Association (APA) at a Regionally Accredited college or university.
- 4.1.2 The applicant shall have achieved a Passing Score of 147 on the Praxis Subject Assessment - School Psychology (ETS Test Code # 5042).
- 4.1.3 The applicant shall have completed a supervised, culminating, comprehensive field experience of at least 1,200 hours, 600 hours of which must have been completed in an educational setting, in an institution or agency that is approved by the applicant's graduate program or the Department, completed at or near the end of formal training, through which the applicant had the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica as well as to acquire new competencies consistent with training program goals.

4.2 Notwithstanding subsection 4.1, the Department may issue a School Psychologist Standard Certificate to an applicant who holds a Nationally Certified School Psychologist (NCSP) certificate from NASP that is in good standing.

### **5.0 Internship Application Requirements**

~~An internship must be in an institution or agency approved by the Department or the applicant's graduate program.~~

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

5.2 For applicants who are applying for the School Psychologist Standard Certificate under subsections 3.1.1 and 4.1, the following documentation is required:

5.2.1 Official transcript from the applicant's Regionally Accredited college or university.

5.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.2.1.2 Sealed paper transcripts may be submitted.

5.2.1.3 The Department will not accept copies of transcripts; and

5.2.2 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2;

5.2.3 The Department-approved form verifying the applicant's completion of the requirement in subsection 4.1.3; and

5.2.4 Additional documentation as required by the Department.

5.3 For applicants who are applying for the School Psychologist Standard Certificate under subsections 3.1.1 and 4.2, the following documentation is required:

5.3.1 Documentation that the applicant holds a NCSP certificate from NASP that is in good standing; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who are applying for the School Psychologist Standard Certificate under subsection 3.1.2, the following documentation is required:

5.4.1 An official copy of the Valid and Current License or Certificate; and

5.4.2 Additional documentation as required by the Department.

### **6.0 Emergency Validity of a Standard Certificate**

~~An Emergency Certificate for a School Psychologist is not available.~~

6.1 A School Psychologist Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A School Psychologist Standard Certificate is not subject to renewal.

### **7.0 Disciplinary Action**

7.1 An Educator's School Psychologist Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

7.2 An Educator's School Psychologist Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.

7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

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## **8.0 Secretary of Education Review**

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Psychologist Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Psychologist Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

## **9.0 Past Certificate Recognized**

The Department shall recognize a School Psychologist Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a school psychologist.

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING**

Statutory Authority: 11 Delaware Code, Sections 8402 & 8404(a)(14) (11 Del.C. §§8402, 8404(a)(14))  
1 DE Admin. Code 801

### **PUBLIC NOTICE**

#### **801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 Del. C. § 8404 (a)(14), proposes to revise its regulations. The proposed amendments, which were voted on in a regular meeting by the COPT on January 12, 2021, seek to update information regarding firearms training and qualifications, temporarily waiving or modifying minimum standards under declared states of emergency, reviewing reciprocity cases, and other minor technical corrections and clarifications.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail [Christopherm.klein@delaware.gov](mailto:Christopherm.klein@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on March 03, 2021. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

### **DECISION AND ORDER CONCERNING THE REGULATIONS**

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Nathaniel McQueen, Jr., Chairman COPT

#### **\*Please Note:**

(1) **The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 763RFA 02-01-21.pdf>

# PROPOSED REGULATIONS

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

**801 Regulations of the Delaware Council on Police Training**

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
3800 BOARD OF DIETETICS/NUTRITION**

Statutory Authority: 24 Delaware Code, Section 3805(11) (24 **Del.C.** §3805(11))  
24 **DE Admin. Code** 3800

**PUBLIC NOTICE**

**3800 State Board of Dietetics/Nutrition**

The Delaware Board of Dietetics/Nutrition, pursuant to 24 *Del. C.* §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to wholly amend the continuing education requirements for renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.

The Board will hold a public hearing on the proposed rule change on February 26, 2021 at 1:30 p.m. via teleconference. The teleconference phone number is 1-302-526-5475. Please enter conference id # 680416 to access the meeting. Written comments should be sent to Danielle Ridgway, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until March 15, 2021.

**\*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del. C. Ch. 104, is available at:**

**<http://regulations.delaware.gov/register/february2021/proposed/24 DE Reg 764RFA 02-01-21.pdf>**

**3800 State Board of Dietetics/Nutrition  
(Break in Continuity of Sections)**

**2.0 Qualifications of Applicants**

**(Break in Continuity Within Section)**

2.2 Foreign Degrees:

- 2.2.1 An agency authorized to validate foreign academic degrees equivalent to the Baccalaureate or Master's Degree conferred by a regionally accredited college or University in the U.S. includes the following:

International Consultants of Delaware, Inc., P.O. Box 8629, Philadelphia, PA 19101 -  
[www.icdel.com](http://www.icdel.com) [www.icdeval.com](http://www.icdeval.com).

**(Break in Continuity Within Section)**

2.4 Examination

- 2.4.1 The satisfactory completion of the registration examination established by the Commission on Dietetic Registration (CDR), the examination of the ~~Certification Board for Nutrition Specialists (CBNS)~~ Board for Certification of Nutrition Specialists (BCNS), or another national examination acceptable to the Board and approved by the Director of Professional Regulation is required. [24 **Del.C.** §3806(a)(4)].

**(Break in Continuity of Sections)**

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## 4.0 Continuing Professional Education

- 4.1 ~~"Continuing professional education" (CPE) as specified in the Dietician/Nutritionist Licensure Act, 24 Del.C. §3808, must meet the content requirements of The American Dietetic Association for CPE credit. One hour of CPE credit shall be given for each hour of CPE activity.~~
- 4.1.1 ~~To renew his or her license a LDN must obtain thirty (30) hours of CPE during each two year certification period.~~
- 4.1.1.1 ~~CPE requirements shall be prorated for new LDNs as follows: If the new LDN has been licensed less than 1 year, CPE is not required for renewal, if the new LDN has been licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required. If licensed for 2 or more years, the full 30 hours of CPE is required.~~
- 4.1.1.2 ~~Extensions of time: An extension of time to complete CPE requirements will be granted to any LDN who can demonstrate to the Board an acceptable cause. The LDN must petition the Board for an extension. Should the Board deny the request, the LDN must complete the requirements to maintain licensure. Examples of circumstances for which the Board may grant extensions of time include, but are not limited to, prolonged illness or extended absence from the country.~~
- 4.2 ~~Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 4.0.~~
- 4.2.1 ~~Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- 4.2.2 ~~Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 4.3.~~
- 4.3 ~~Random audits will be performed by the Board to ensure compliance with the CPE requirements.~~
- 4.3.1 ~~The Board will notify LDNs within sixty (60) days after the license renewal date that they have been selected for audit.~~
- 4.3.2 ~~LDNs selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.~~
- 4.3.3 ~~Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CPE requirements in Rule 4.0, which may include, but is not limited to, the following information:~~
- 4.3.3.1 ~~Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance.~~
- 4.3.3.2 ~~Date of CPE course;~~
- 4.3.3.3 ~~Instructors of CPE course;~~
- 4.3.3.4 ~~Sponsor of CEU course;~~
- 4.3.3.5 ~~Title of CPE course; and~~
- 4.3.3.6 ~~Number of hours of CPE course.~~
- 4.3.4 ~~The CPE activities must be performed within the two year period prior to renewal of licensure. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.~~
- 4.3.5 ~~The current document published by CDR, describing CPE guidelines for registered dietitians shall be used as a guide to interpret requirements of CDR for CPE.~~
- 4.3.6 ~~The Board will accept the decisions of CDR and CBNS for appropriateness of CPE activities and reserves the right to approve or disapprove any other activity deemed appropriate for CPE, using current CDR standards as criteria.~~
- 4.3.7 ~~The Board may establish maximum hours allowed for any type of activity in the two year period.~~
- 4.3.7.1 ~~A maximum of 15 CPE hours shall be allowed for selfstudy programs.~~
- 4.3.7.2 ~~A maximum of 6 CPE hours shall be allowed for exhibits.~~
- 4.3.7.3 ~~A maximum of 10 CPE hours shall be allowed for poster presentations.~~

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- 4.4 ~~The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for discipline in the practice of dietetics and nutrition, pursuant to 24 Del.C. §3811. The minimum penalty for unjustified noncompliance shall be a letter of reprimand.~~
- 4.5 ~~Any licensee denied renewal or disciplined pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.~~
- 4.1 Continuing Education Hours Required for Renewal
- 4.1.1 The LDN shall be required to complete 30 hours of continuing professional education (CPE) acceptable to the Board during each biennial renewal period.
- 4.1.2 Proof of continuing professional education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of this Rule.
- 4.1.3 Attestation shall be completed electronically at the time of online renewal.
- 4.1.4 The LDN shall retain all certificates and other documented evidence of participation in an approved/accredited CPE program for a period of at least three years. Upon request, such documentation shall be made available to the Board for random audit and verification purposes.
- 4.1.4.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. Acceptable proof shall include:
- 4.1.4.1.1 The date of CPE course;
- 4.1.4.1.2 The instructors of CPE course; the sponsor of CPE course;
- 4.1.4.1.3 The title of CPE course; and
- 4.1.4.1.4 The number of hours of CPE course.
- 4.1.5 CPE requirements shall be prorated for new LDNs as follows:
- 4.1.5.1 If the new LDN has been licensed less than 1 year, CPE is not required for renewal.
- 4.1.5.2 If the new LDN has been licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required.
- 4.1.5.3 If licensed for 2 or more years, the full 30 hours of CPE is required.
- 4.2 Exemptions and Extensions
- 4.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing professional education requirement may apply to the Board for a waiver. A waiver may provide for an extension of time or an exemption from some or all of the continuing professional education requirements for one renewal period. A separate request must be submitted for every renewal period during which a waiver is requested.
- 4.2.2 A request for a waiver must be submitted sixty days prior to the license renewal date.
- 4.2.3 Requests for Extension - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve months to make up all outstanding required hours upon a showing of good cause as to why the requirements could not be met at the time of renewal. The licensee must state the reason for such extension along with any relevant documentation. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or licensee's immediate family, or a death in the immediate family of the licensee. The written request for extension must be received prior to the renewal deadline. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required hours. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board. Make-up credits may not be used in the next renewal period.

- 4.3 Acceptable Continuing Professional Education. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is whether the program is a planned program of learning that contributes directly to the professional competence of the LDN. Continuing education hours awarded for activities or programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:
- 4.3.1 The Commission on Dietetic Registration;
  - 4.3.2 The Board for Certification of Nutrition Specialists; or
  - 4.3.3 Other professional or education organizations so long as the specific program is acceptable to the Board.
- 4.4 Acceptable CPE Activities. The following are acceptable CPE activities and the maximum number of hours allowed for each activity during the biennial renewal period.
- 4.4.1 Academic Coursework (No maximum):
    - 4.4.1.1 A one semester or trimester credit hour course taken will be worth 5 CPEs;
    - 4.4.1.2 A one semester or trimester credit hour course audited will be worth 3 CPEs;
    - 4.4.1.3 A one-quarter credit hour course taken will be worth 3 CPEs;
    - 4.4.1.4 A one quarter credit hour course audited will be worth 2 CPEs.
  - 4.4.2 Non-Academic Coursework (One CPE is equivalent to one contact hour. No maximum.):
    - 4.4.2.1 Recorded Online Academic Lectures or Seminars. Recorded online lectures or seminars that are offered by US regionally accredited colleges or universities. Official verification of participation is required such as a certificate of completion.
    - 4.4.2.2 Case Presentations: Examples include but are not limited to grand rounds and patient case studies.
    - 4.4.2.3 Certificate Program: Intensive training program with a component that assesses the participant's performance. Upon completion of the program, participants receive a certificate attesting to the attainment of a new knowledge or skill set such as CDR's Certificate of Training in Adult Weight Management or BCNS' Certified Ketogenic Nutrition Specialist Program. Certificate programs must:
      - 4.4.2.3.1 Be dietetics or nutrition-related;
      - 4.4.2.3.2 Have stated learning objectives upon which the course and assessment content is based;
      - 4.4.2.3.3 Include content expert instruction and interactive discussion, which may occur face-to-face or by electronic delivery;
      - 4.4.2.3.4 Include a post-course assessment that assesses the participant's completion of the program's learning objectives;
      - 4.4.2.3.5 Have all course materials reviewed by a minimum of three professionals with demonstrated expertise in the content area attesting to the number of hours needed to complete the program; and
      - 4.4.2.3.6 Be approved or accredited by the Commission on Dietetic Registration (CDR) or BCNS. If the program includes a self-study component, the self-study must include an assessment based on stated learning objectives wherein course participants must pass the assessment to continue in the program and to receive CPEUs for the self-study component.
    - 4.4.2.4 Exhibits: Dietetics or nutrition-related exhibits such as those presented at the Academy of Nutrition and Dietetics Food and Nutrition Conference and Expo. (One half CPE is equivalent to one-half contact hour. Five CPE maximum);
    - 4.4.2.5 Experiential Skill Development: Examples include but are not limited to culinary skills training, physical assessment training, multi-skills training, and computer/technology training. (One CPE is equivalent to one contact hour. No maximum);
    - 4.4.2.6 Journal Clubs: Preplanned meetings, which provide for group participation, include three or more professionals and include in-depth discussion of a single dietetics or nutrition-

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related topic from pre-assigned articles/papers in professional, peer-reviewed journals (materials should not be older than five years). Online journal clubs, in which interactive posts by dietetics or nutrition professionals are read by and responded to by dietetics or nutrition professionals. (One CPE is equivalent to one contact hour. No maximum)

- 4.4.2.7 Lectures, Seminars, Webinars, or Teleseminars: These activities must occur in real time and allow for interaction between the presenter and attendees. (One CPE is equivalent to one contact hour. No maximum);
- 4.4.2.8 Recorded CPE Preapproved by CDR, BCNS, or other acceptable provider. (One CPE is equivalent to one contact hour. Ten CPE maximum);
- 4.4.2.9 Poster Sessions: Dietetics-related poster sessions, such as those seen at the Academy of Nutrition and Dietetics Food and Nutrition Conference and Expo, can be awarded CPEUs. (One-half CPE is equivalent to one-half contact hour. Five CPE maximum);
- 4.4.2.10 Professional Leadership: Holding an elected or appointed office in a dietetics or dietetics-related national, state, or district organization that contributes to the acquisition of leadership skills and professional development. (Three CPEs per office held per year. Six CPE maximum); and
- 4.4.2.11 Professional Reading: Peer-reviewed, dietetics or nutrition-related articles from professional journals and professional newsletters. Online journals are acceptable. Articles in professional newsletters must be identified as peer reviewed. The article must be read within 5 years of the date the article was published. (Reading one article is equivalent to one-half CPE. Five CPE maximum)

### 4.5 Audit of Continuing Education Hours

- 4.5.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Board, to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 4.5.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various hours claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board shall attempt to verify the hours shown on the documentation provided by the licensee. Upon completion of the review, the Board will determine whether the licensee's hours meet the requirements of these rules.
  - 4.5.2.1 Any continuing education not meeting all provisions of these rules will be rejected in part or in whole by the Board.
  - 4.5.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Board.
  - 4.5.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Board. This continuing education will not be counted towards the next renewal period.

- 4.6 Board Review and Hearing Process. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing will be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if the licensee has met the requirement and if not, if there are any extenuating circumstances justifying the noncompliance with these requirements. Unjustified noncompliance with these regulations shall be considered unprofessional conduct in the practice of polysomnography and subject to discipline.

***(Break in Continuity of Sections)***

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## **10.0** **Inactive status**

- 10.1 A licensee may be placed on inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board.
- 10.2 To apply for reactivation of an inactive license, a licensee shall:
  - 10.2.1 Submit a letter requesting reactivation;
  - 10.2.2 Submit a prorated reactivation fee;
  - 10.2.3 Submit proof of completion of the full CPE requirement within 24 months prior to reapplication.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**3800 State Board of Dietetics/Nutrition**

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## Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

## Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)  
14 **DE Admin. Code** 201

**REGULATORY IMPLEMENTING ORDER****201 District and School Shared Decision Making****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** 201 District and School Shared Decision Making. The current regulation mirrors sections of 18 **Del.C.** Ch. 8, School Shared Decision-Making, and its repeal will not modify the Department of Education's responsibilities. The Department has not processed a School Shared Decision Making Transition Planning Grant in a number of fiscal years.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on November 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 201 District and School Shared Decision Making because the current regulation mirrors sections of 18 **Del.C.** Ch. 8, School Shared Decision-Making. Its repeal will not modify the Department of Education's responsibilities. The Department has not processed a School Shared Decision Making Transition Planning Grant in a number of fiscal years.

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### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 201 District and School Shared Decision Making. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 201 District and School Shared Decision Making attached hereto as *Exhibit "B"* is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 201 District and School Shared Decision Making hereby repealed shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 201 District and School Shared Decision Making repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 201 District and School Shared Decision Making in the *Administrative Code of Regulations* for the Department of Education.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 17, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of December 2020.

#### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 17th day of December 2020

#### State Board of Education

/s/ Whitney Townsend Sweeney, President	/s/ Candice Fifer
/s/ Wali W. Rushdan, II, Vice President	/s/ Vincent Lofink
/s/ Audrey J. Noble, Ph.D.	/s/ Provey Powell, Jr.

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

### 201 District and School Shared Decision Making

#### ~~4.0 District Shared Decision Making Transition Planning Grant Process~~

- ~~4.1 Requests for a district shared decision making transition planning grant shall be submitted to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Grant requests shall include the following information:~~
  - ~~4.1.1 The local board of education Resolution endorsing both the concept of shared decision making and the Report and Recommendations of the District Advisory Committee. See 14 **Del.C.** §802(b)(c).~~
  - ~~4.2 A copy of the Report and Recommendations of the District Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 **Del.C.** §802 have been met.~~
    - ~~4.2.1 District Advisory Committee (list names and groups represented);~~
    - ~~4.2.2 Listing of the structured conversations and a brief description of the activities;~~
    - ~~4.2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups;~~
    - ~~4.2.4 Recommendation to develop a district transition plan to implement shared decision making;~~

- ~~1.2.5~~ Process for establishing a district transition plan; and
- ~~1.2.6~~ Process for determining the composition and roles and responsibilities delegated to the District Transition Team.
- ~~1.3~~ The District Transition Team (list names and groups represented).
- ~~1.4~~ A description of the process for the District Transition Team to reach decisions and resolve conflicts.
- ~~1.5~~ A description of the plan for communicating the results of the district transition plan to the broader school community for information and critical review.
- ~~1.6~~ Acknowledgment that within the district transition plan there must be a policy for supporting shared decision making activities from the local budget, including the school improvement planning process set forth in ~~14 Del.C. §806~~, and acknowledgment that funds must be specifically identified and made available for use by school committees.
- ~~1.7~~ A description of how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.
- ~~1.8~~ Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the district. Any stakeholder refusing to sign should explain why as part of the grant request.
- ~~1.9~~ Assurance that a copy of the Report and Recommendations is posted within the district for public review.
- ~~1.10~~ Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.
- ~~1.11~~ Procedure to be used by interested parties to obtain a copy of the district grant request.

## **2.0 School Shared Decision Making Transition Planning Grant Process**

- ~~2.1~~ Requests for a school shared decision making transition planning grant shall be submitted via the local board of education to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901 3639. Grant requests shall include the following information:
  - ~~2.1.1~~ Report and Recommendations of the School Advisory Committee:
    - ~~2.1.1.1~~ A copy of the Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of ~~14 Del.C. §804~~ have been met.
      - ~~2.1.1.1.1~~ School Advisory Committee (list names and groups represented);
      - ~~2.1.1.1.2~~ Listing of the structured conversations and a brief description of the activities;
      - ~~2.1.1.1.3~~ Brief description of how stakeholders made a good faith effort to communicate with their constituent groups;
      - ~~2.1.1.1.4~~ Recommendation to develop a school transition plan to implement shared decision-making;
      - ~~2.1.1.1.5~~ Process for establishing a school transition plan; and
      - ~~2.1.1.1.6~~ Process for determining the composition and roles and responsibilities delegated to the School Transition Team
- ~~2.2~~ The School Transition Team (List Names and Groups Represented)
- ~~2.3~~ A description of the process for the School Transition Team to reach decisions and resolve conflicts.
- ~~2.4~~ Assurance that the school has committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision making and improve parental involvement.
- ~~2.5~~ A description of the plan for communicating the results of the school improvement plan to the broader school community for information and critical review.

- ~~2.6 A description of how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.~~
- ~~2.7 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the school. Any stakeholder refusing to sign should explain why as part of the grant request.~~
- ~~2.8 Assurance that a copy of the Report and Recommendations is posted within the school for public review.~~
- ~~2.9 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.~~
- ~~2.10 Procedure to be used by interested parties to obtain a copy of the school grant request~~

### **3.0 Approval of School Improvement Grants**

- ~~3.1 A school that has an approved shared decision making transition plan as specified in 14 **Del.C.** §806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Requests shall include the following information:
    - ~~3.1.1 Evidence that the local board of education has adopted the school's transition plan; and~~
    - ~~3.1.2 The school improvement plan containing the following components:
      - ~~3.1.2.1 Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;~~
      - ~~3.1.2.2 A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision making and support continuous improvement in teaching and student learning;~~
      - ~~3.1.2.3 Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;~~
      - ~~3.1.2.4 A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;~~
      - ~~3.1.2.5 The structural changes or procedures for providing the necessary time and skill-building to support shared decision making and continuous improvement in teaching and student learning;~~
      - ~~3.1.2.6 The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;~~
      - ~~3.1.2.7 A proposed timeline for phasing in the school improvement plan; and~~
      - ~~3.1.2.8 A proposed budget for the use of the school improvement grant.~~~~~~
  - ~~3.2 A school with an approved application shall be eligible for a school improvement grant for the following (3) years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by 14 **Del.C.** §808 is completed and the results of such are included in the school's application.~~
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# FINAL REGULATIONS

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)  
14 DE Admin. Code 731

### REGULATORY IMPLEMENTING ORDER

#### 731 School Food Service Employees

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §1322(c), the Secretary of Education intends to amend 14 DE Admin. Code 731 School Food Service Employees. This regulation is being amended due to the COVID-19 related change in school nutrition food operations and the inability to report the number of reimbursable breakfasts, reimbursable lunches, and other meals served by Delaware schools, which consequently renders the salary formula of 14 DE Admin. Code 731 improper for the determination of compensation for and number of necessary school food service employees.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on December 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on December 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for the proposed amended regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 731 School Food Service Employees due to the COVID-19 related change in school nutrition food operations and the inability to report the number of reimbursable breakfasts, reimbursable lunches, and other meals served by Delaware schools, which consequently renders the salary formula of 14 DE Admin. Code 731 improper for the determination of compensation for and number of necessary school food service employees.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 731 School Food Service Employees. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 731 School Food Service Employees attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 731 School Food Service Employees hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of 14 DE Admin. Code 731 School Food Service Employees amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 731 School Food Service Employees in the *Administrative Code of Regulations* for the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on January 11, 2021. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 11th day of January 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 11th day of January 2021

## 731 School Food Service Employees

### 1.0 Experience

School food service employees may be granted one (1) year of experience for each creditable year of experience in similar employment.

### 2.0 Determination of Employee Staffing and Formula

- 2.1 School districts shall determine the salaries paid to cafeteria workers as follows:
- 2.1.1 Of the total number of ~~full-time~~ full-time workers assigned to a food preparing cafeteria, a maximum of two may be paid as a cook and baker. Satellite schools are eligible for State funded positions as set forth in 14 **Del.C.** §1322(a).

### 3.0 Salary Formula

- 3.1 The salaries prescribed in 14 **Del.C.** §1322(c) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by ~~the formula:~~
- ~~3.1.1 Seven (7) hours of labor per 100 meals determined as follows: the number of meals prepared and served based on the monthly average reported for the 2019-20 academic year.~~
- ~~3.1.1.1 Total number of reimbursable lunches served in the base month; plus~~
- ~~3.1.1.2 Total number of reimbursable breakfasts served in the base month; plus~~
- ~~3.1.1.3 Total of all other meals served in the base month determined by aggregating all income.~~
- ~~3.1.1.3.1 The number of meals prepared and served shall be based on the average reported for the month of October on the monthly reimbursement claim.~~
- 3.2 Each school district shall submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.
- 3.3 Each school district shall submit a roster of cafeteria managers to the Department of Education showing names of managers and the salaries prescribed in 14 **Del.C.** §1322(a). Each district shall also submit a computation sheet as prescribed by the Department of Education to determine the number of meals served according to the state formula.

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))

14 **DE Admin. Code** 1580

## REGULATORY IMPLEMENTING ORDER

### 1580 School Library Media Specialist

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1580 School Library Media Specialist. The regulation concerns the requirements for a School Library Media Specialist Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments

include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Library Media Specialist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Library Media Specialist Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a School Library Media Specialist Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on November 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

## II. FINDINGS OF FACTS

On December 3, 2020, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1580 School Library Media Specialist, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1580 School Library Media Specialist.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1580 School Library Media Specialist subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1580 School Library Media Specialist, attached hereto as Exhibit A, is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1580 School Library Media Specialist adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1580 School Library Media Specialist in the Administrative Code of Regulations for the Department.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 17th day of December, 2020.

### Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 17th day of December, 2020.

### State Board of Education

/s/ Whitney Townsend Sweeney, President

/s/ Wali W. Rushdan, II, Vice President

/s/ Candice Fifer

/s/ Vincent Lofink

/s/ Audrey J. Noble, Ph.D.

/s/ Provey Powell, Jr.

**\*Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

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## 1580 School Library Media Specialist

### 1.0 Content

- 4.1 This regulation shall apply to the issuance of a School Library Media Specialist Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), ~~for School Library Media Specialist. This certification. The School Library Media Specialist Standard Certificate is required for all school library media specialists who are working in grades K to 12 in Delaware public schools.~~
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

### 2.0 Definitions

- 2.1 ~~The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

The following words and terms, when used in this regulation, shall have the following meaning:

**"Department"** means the Delaware Department of Education.

**"Educator"** means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

**"Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

**"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Regionally Accredited"** means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

**"Valid and Current License or Certificate"** means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

### 3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a School Library Media Specialist Standard Certificate as a School Library Media Specialist to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and, and meets the requirements set forth in Section 4.0 of this regulation; or~~

3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure and presents proof of a Valid and Current License or Certificate as a school library media specialist.

3.1.3 ~~Has satisfied the additional requirements in this regulation~~

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Library Media Specialist Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

#### 4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

An educator shall also meet the following:

4.1 ~~Has satisfied at least one of the following additional requirements:~~

4.1.1 ~~Holds a Masters or Doctoral degree from a regionally accredited college or university in an American Library Association approved program in School Library Media; or~~

4.1.2 ~~Holds a Masters or Doctoral degree from a regionally accredited college or university in any area; and~~

4.1.2.1 ~~Has completed a Department approved School Library Media program which meets American Library Association Standards.~~

4.1 An applicant for a School Library Media Specialist Standard Certificate shall have satisfied the requirement in subsection 4.1.1.

4.1.1 An applicant shall have satisfied one of the following education requirements:

4.1.1.1 Earned a master's or doctoral degree from a Regionally Accredited college or university in school library media from an American Library Association-approved program; or

4.1.1.2 Earned a master's or doctoral degree from a Regionally Accredited college or university in any area and completed a Department-approved school library media program that meets the American Library Association's standards.

#### 5.0 **Application Requirements**

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

5.2 For applicants who are applying for the School Library Media Specialist Standard Certificate under subsection 3.1.1, the following documentation is required:

5.2.1 Official transcript from the applicant's Regionally Accredited college or university.

5.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.2.1.2 Sealed paper transcripts may be submitted.

5.2.1.3 The Department will not accept copies of transcripts; and

5.2.2 Additional documentation as required by the Department.

5.3 For applicants who are applying for the School Library Media Specialist Standard Certificate under subsection 3.1.2, the following documentation is required:

5.3.1 An official copy of the Valid and Current License or Certificate; and

5.3.2 Additional documentation as required by the Department.

#### 6.0 **Validity of a Standard Certificate**

6.1 A School Library Media Specialist Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A School Library Media Specialist Standard Certificate is not subject to renewal.

## **7.0 Disciplinary Action**

- 7.1 An Educator's School Library Media Specialist Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's School Library Media Specialist Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

## **8.0 Secretary of Education Review**

- 8.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Library Media Specialist Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Library Media Specialist Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 8.1.1 For school districts, requests shall be approved by the superintendent of the school district.
- 8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

## **9.0 Past Certificate Recognized**

The Department shall recognize a School Library Media Specialist Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a school library media specialist.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

### **ORDER**

### **Non-Emergency Medical Transportation (NEMT)**

#### **NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (Department) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend Title XIX Medicaid State Plan regarding transportation, specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del. C. § 10114 and its authority as prescribed by 31 Del. C. § 512.

The Department published its notice of proposed regulation changes pursuant to 29 Del. C. § 10115 in the January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after February 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (Department/DMMA) proposes to amend Attachment 3.1-A Page 9a and Attachment 4.19-B Page 3 of Title XIX Medicaid State Plan regarding *transportation, specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services.*

**Background**

The Medicaid non-emergency medical transportation (NEMT) benefit is authorized under the Social Security Act under section 1902(a)(70) and 42 CFR § 440.170. It ensures necessary transportation to and from providers and includes coverage for transportation and related travel expenses necessary to secure medical examinations and treatment.

**Statutory Authority**

- 42 U.S.C. § 1902(a)(70)
- 42 CFR § 440.170(a)

**Purpose**

The purpose of this final regulation is to establish coverage and reimbursement methodologies for lodging related non-emergency medical transportation (NEMT) services for all Medicaid eligible individuals.

**Public Notice**

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, the Department/DMMA gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2020.

**Centers for Medicare and Medicaid Services Review and Approval**

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

**Provider Manuals and Communications Update**

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages, or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>.

**Fiscal Impact Statement**

The anticipated fiscal impact is below:

	Federal Fiscal Year 2021	Federal Fiscal Year 2022
Federal funds	\$ 2,828	\$ 5,721
General (State) funds	\$ 2,184	\$ 4,394

**Summary of Comments Received with Agency Response and Explanation of Changes**

The following summarized comments were received:

**Comment:** One commenter questioned what entity would be making the medical necessity evaluation or how this would be documented.

**Agency Response:** DMMA will take this into account in developing medical necessity and prior authorization processes.

**Comment:** One commenter recommended that the regulation be revised to allow for the difficulty faced by single parents/guardians, particularly those with multiple children. Instead of “one authorized escort,” the regulation should allow for an exception for parents/guardians who cannot support the child in need of care without an additional sibling(s) in attendance.

**Agency Response:** 42 CFR 440.170(a)(3)(iii) allows states to include travel expenses for an attendant to accompany a beneficiary, if necessary. It does not allow for the state to cover travel expenses for additional members of the beneficiary’s family. The policy does not preclude additional members of the family from attending; however, it limits authorization of and payment for lodging or meals and lodging related to travel to the beneficiary and one authorized escort.

**Comment:** Two commenters endorsed the proposed regulation.

**Agency Response:** DMMA appreciates the endorsement.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor’s Advisory Council for Exceptional Citizens
- Nemours Children’s Health System
- State Council for Persons with Disabilities

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2020 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding transportation, specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services, is adopted and shall be final effective February 11, 2021.

1/13/2021

\_\_\_\_\_  
Date of Signature

Molly K. Magarik, Secretary, DHSS

Revision: CMS

Attachment 3.1-A  
Page 9a

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: DELAWARE

### SECTION 3 – SERVICES: GENERAL PROVISIONS

#### 3.1 Amount, Duration, and Scope of Services

Medicaid is provided in accordance with the requirements of section 1902(a), 1902(e), 1903(i), 1905(a), 1905(p), 1905(r), 1905(s), 1906, 1915, 1916, 1920, 1925, 1929 and 1933 of the Act; section 245A(h) of the Immigration and Nationality Act; and 42 CFR Parts 431, 440, 441, 442 and 483.

#### A. Categorically Needy

**24. Any other medical care, and other type of remedial care recognized under State law, specified by law Secretary (in accordance with section 1905(a)(28) of the Social Security Act and 42 CFR 440.170).**

**a. Transportation (provided in accordance with 42 CFR 440.170 as an optional medical service excluding “school-based” transportation.**

Not Provided

# FINAL REGULATIONS

- Provided without a broker as an optional medical ~~[services service]~~: Payment may be made for the following non-emergency medical transportation services when:
  - It is medically necessary for the member to travel to receive treatment and/or medical evaluation;
  - The location of the medical service provided is greater than 25 miles from the member’s place of residence; and
    - The member is required to remain on the premises of the medical service provider overnight; or
    - The medical service provided results in displacement of the member for a consecutive 24-hour period.
- i. Lodging Service – Transportation-related services authorized by the single state agency to provide overnight lodging for eligible recipients and, with prior authorization, one authorized escort.

Provider Requirements:

- a. Lodging service providers must enroll with the state Medicaid program directly into the Delaware Medicaid claims processing system; and
  - b. Providers must submit for reimbursement directly into the Delaware Medicaid claims processing system.
- ii. Lodging and Meals Service – Transportation-related services authorized by the single state agency to provide overnight lodging, which includes meals (such as Ronald McDonald Houses), for eligible recipients and, with prior authorization, one authorized escort.

Provider Requirements –

- a. Lodging and Meals providers must enroll with the state Medicaid program; and
- b. Providers must submit for reimbursement directly into the Delaware Medicaid claims processing system.
- c. Limitations – In the event that the member is admitted as inpatient, and provided meals via that inpatient admission, meals for the member will not be covered.

~~(If state attests “Provided without a broker as an optional medical service” then insert supplemental information.) Describe below how the transportation program operates including types of transportation and transportation related services provided and any limitations. Describe emergency and non-emergency transportation services separately. Include and interagency or cooperative agreements with other Agencies or programs.~~

- Non-emergency transportation is provided through a brokerage program as an optimal ~~medial~~ medical service in accordance with 1902(a)(70) of the Social Security Act and 42 CFR 440.170(a)(4).

No. SPA#	→	→	→	→	→	→	→	Approval Date	_____¶
TN Supersedes	¶								
TN No. SPA#	10-002	→	→	→	→	→	→	Effective Date	[January 1, 2020]¶

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES-  
OTHER TYPES OF CARE

- Transportation Services are reimbursed as follows:
  1. Emergency Transportation: Effective for dates of service on or after January 1, 2012, emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:

- Ground Mileage, per Statute Mile will be 22%
  - Advanced Life Support. Emergency Transport will be 13%
  - Basic Life Support, Emergency Transport will be 17%
  - Conventional Air Services. Transport One Way (Rotary Wing) will be 39%
  - Rotary Wing Air Mileage, per Statute Mile will be 38%
2. Non-emergency Transportation without a broker: Effective for dates of service on or after January 1, [2020 2021], non-emergency transportation services provided by transportation service providers enrolled with the state Medicaid program who submit for reimbursement directly are reimbursed as follows:
- Lodging – Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers of Lodging services. The agency's Lodging fee schedule is effective for services provided on and after January 1, [2020 2021]. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.
  - Lodging and Meals – Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers of Lodging and Meals services. The agency's Lodging and Meals fee schedule is effective for services provided on and after January 1, [2020 2021]. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.
3. Non-emergency Transportation with a broker: The broker is reimbursed a monthly capitated rate for each Medicaid client residing in the State.
- Optometrist and Opticians are reimbursed for examinations as physicians are paid as described in Attachment 4.19-B  
Other Types of Care, Physician, Podiatry and Independent Radiology Services.  
Except as otherwise noted in the Plan, State-developed fee schedule rates are the same for both governmental and private individual practitioners. The fee schedule and any annual/periodic adjustments to the fee schedule are published and found at: <https://www.dmap.state.de.us/downloads/hcpcs.html>.  
Spectacle frames and lenses and contact lenses ~~and~~ are reimbursed based on Level II HCPCS procedure codes. The agency's fee schedule rate for these procedure codes was set on July 1, 2002 and is available on the DMAP website.
  - Out-of-State Services, for which Delaware has established a universal rate or cap, will be reimbursed at the provider's usual and customary charge or Delaware's rate/cap, whichever is lower.  
Where there is no universal rate/cap (i.e. providers are paid a provider-specific rate), Delaware Medicaid will establish a rate or cap that is consistent with the reimbursement methodology defined in other sections of Attachment 4.19-B for that specific service and pay the provider the lower of that rate/cap or their usual and customary charge.

TN·No·SPA··¶	Approval·Date··¶
Supersedes¶	¶
TN·No·SPA··#11-009¶	Effective·Date··[January 1, 2020]¶

Attachment 4.19-B  
Page 3b

- Extended Services to Pregnant Women - Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMAP Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or

after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

**ORDER**

**Adult Dental**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (Department) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend Title XIX Medicaid State Plan regarding Dental Services, specifically, to add adult dental services. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020, at which time the Department would receive information, factual evidence, and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after October 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (Department/DMMA) proposes to amend Title XIX Medicaid State Plan regarding Dental Services, specifically, to add dental services for adults.

**Background**

Senate Substitute No. 1 for Senate Bill No. 92 was signed by the Governor of Delaware on August 6, 2019 and provides dental services for adult Medicaid Recipients. The effective date of this Act was October 1, 2020. The adult dental benefit will offer basic dental services to eligible adults 21 and over. While state Medicaid programs are required by federal rules to cover comprehensive dental services for children, coverage for adult dental services is optional. Delaware will join many of the other states that currently offer this benefit.

Providing dental care is health care, as improving oral health can impact overall physical health. According to the American Dental Association, "Evidence clearly shows that providing adult dental benefits through Medicaid has a significant impact on access to and utilization of dental care among low-income adults. Expanding dental benefits to adults also significantly reduces costly emergency department visits for dental conditions."

**Statutory Authority**

- 42 CFR 440.100, Dental Services
- 42 U.S.C. § 1902

**Purpose**

*Purpose*

The purpose of this proposed regulation is to add dental services for adults.

*Public Notice*

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an

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opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2020.

## *Centers for Medicare and Medicaid Services Review and Approval*

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

## *Provider Manuals and Communications Update*

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages, or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>.

## **Fiscal Impact Statement**

The anticipated fiscal impact is below:

	Federal Fiscal Year 2021	Federal Fiscal Year 2022
Federal funds	\$ 8,541,792	\$10,707,452
General (State) funds	\$ 4,158,708	\$5,251,558

## **Summary of Comments Received with Agency Response and Explanation of Changes**

The following summarized comments were received:

**Comment:** One commenter suggested changing the term "Emergency/Extended" dental benefit to "Supplemental" dental benefit in order to access the additional \$1500 benefit.

**Agency Response:** No change in the language will be made as the terminology is in alignment with the legislative language.

**Comment:** One commenter questioned if the additional benefit may be applied retroactively for treatment that was already performed on an immediate basis, i.e., when the need for emergency service did not allow time for a prior authorization to be submitted.

**Agency Response:** Treatment for an emergency dental condition does not require prior authorization; however, sufficient evidence and documentation of the dental emergency will be required with submission of the claim.

**Comment:** One commenter suggested including a denture benefit, indicating the CDE codes and fees of all covered denture procedures would mirror those of the current children's Medicaid program.

**Agency Response:** The adult dental benefit does cover repairs of existing dentures; however, additional denture benefits would exceed the established benefit limits.

**Comment:** One commenter suggested the benefit reimburses for CDT code D9613 to allow medication to be injected at the site of surgery for pain control following surgery.

**Agency Response:** DMMA appreciates efforts by the dental provider community to decrease the use of opioids for pain control. DMMA will review the efficacy and viability of including D9613 (infiltration of sustained release therapeutic drugs [single or multiple sites]) as a covered service.

**Comment:** One commenter suggested the \$3 co-pay be removed from the bill.

**Agency Response:** Such a change would require a legislative change. Until such time as a change may be made, DMMA is moving forward with operationalizing the co-pay. However, as with all other Medicaid copays at this time, no copays will be charged during the Public Health Emergency.

**Comment:** One commenter indicated a preference for the use of an Administrative Services Organization (ASO) in a fee-for-service (FFS) structure instead of Managed Care Organizations (MCO). As members are unfamiliar with MCOs, and it is imperative that the credentialing process for both DMMA and the MCOs is quick and easy.

**Agency Response:** DMMA recognizes that provider education and supports will be critical to the success of the implementation of a Medicaid adult dental benefit. DMMA is committed to working with MCO partners and the dental provider community to streamline the implementation and administration of the new benefit.

**Comment:** One commenter suggested to provide adequate dental care in a timely manner, it is crucial that the process for any needed prior authorization is simple and the response time is quick. All prior authorization requests should ideally be handled within 10-14 days for non-emergent situations and 48 hours for urgent/emergent situation. There needs to be an established appeal process to review and resolve dentist appeals. Ideally, appeals should be resolved within 30 days.

**Agency Response:** The current MCO contract includes the following language to address these concerns:

- For standard service authorization decisions, the MCO is contractually required to provide notice as expeditiously as the member's health condition requires and within 10 calendar days following receipt of the request for service, with a possible extension of up to 14 additional calendar days.
- For cases in which a provider indicates (in making the request on the member's behalf or supporting the member's request), or the MCO determines (upon a request from the member), that the standard service authorization decision timeframe could seriously jeopardize the member's life, health or ability to attain, maintain, or regain maximum function, the MCO must make an expedited authorization decision and provide notice as expeditiously as the member's health condition requires and no later than 72 hours after receipt of the request for service. Emergency treatment does not require prior authorization; however, sufficient evidence and documentation of the dental emergency will be required with submission of the claim.
- Resolution of an Appeal and notice to the affected parties shall not exceed 30 calendar days from the day the MCO receives the Appeal.

**Comment:** One commenter suggested that because there is an annual benefit limit, providers need to be able to track beneficiary spending, i.e., how much of the patient's limit is remaining. The MCOs will need to demonstrate that they are able to expand their portal to include their adult Medicaid-eligible recipients and maintain the current turn-around time on their portal (as they do with the current children's Medicaid program), there should not be a significant concern about lack of reporting when a patient transitions from FFS to a MCO. However, it is important that all providers be informed that in order for this process to work, all claims need to be submitted daily and the provider would need to check eligibility and treatment history on the day of each appointment to ensure the most accurate, up-to-date report of benefit limits.

**Agency Response:** DMMA and each MCO have made changes to their systems to collect information about the benefit amount that has been used during each annual period for a member. The information will be shared daily between each system. Each organization will be able to provide the YTD benefit total, remaining benefit balance, YTD emergency benefit total, and the remaining emergency benefit balance. In DMES, this data can be reported to

the provider via each plan's portal, automated voice response (phone), or electronic request.

**Comment:** One commenter stated that it is important that support staff from both DMMA and the MCOs be available to answer questions and resolve any problems efficiently.

**Agency Response:** DMMA thanks you for your feedback. DMMA and the contracted MCOs are committed to continued effective communication as well as training and education for network providers.

**Comment:** One commenter suggested that a Delaware-licensed dentist should be employed by the MCOs to manage clinical aspects of the contract, such as proper provision of medically-necessary covered services and monitoring of program quality and utilization review.

**Agency Response:** This suggestion is currently under consideration by DMMA.

**Comment:** One commenter recommended the MCOs monitor patient satisfaction and dentist satisfaction annually, as well as report metrics on a quarterly basis, which would include, but would not be limited to:

- Network size
- Average time to make payment of claims
- Accuracy of paid claims
- Response time (call wait time) in dentist call center
- Response time (call wait time) in patient call center

**Agency Response:** MCOs are contractually required to report to the State on a number of program standards which include, but are not limited to, those described above. Further, MCO performance and adherence to State and federal requirements are reviewed by an external quality review organization (EQRO) annually.

**Comment:** One commenter expressed concern that MCOs will be able to negotiate their own fee schedules. There is a concern that the fees will be reduced significantly to the point where it will not be feasible for our members to accept this program. We need to have fair reimbursement rates.

**Agency Response:** MCOs will follow the Medicaid fee schedule and will not bear financial risk for the costs of the adult benefit. DMMA recognizes the challenges associated with estimating the utilization that can be expected when a new benefit is implemented. However, it is DMMA's intent to eventually enter into a risk-arrangement with the MCOs for adult dental services, similar to how DMMA contracts with MCOs for other services. Once this occurs, MCOs and dental providers will have the ability to negotiate payment rates and MCOs will continue to be required to provide an adequate provider network to ensure access to dental services.

**Comment:** One commenter suggested providers be given at least 60-day written notification prior to any changes in fee schedule or processing policies.

**Agency Response:** DMMA will adhere to federal requirements regarding prior notice and public input prior to any programmatic changes.

**Comment:** One commenter recommended QPM reported by the MCOs for the Adult Medicaid dental program be done using the measures developed by the Dental Quality Alliance (DAA), which is specific to dentistry.

**Agency Response:** DMMA welcomes the dental community's input into Delaware's Medicaid Quality Strategy, including any QPMs for dental. DMMA will be updating this strategy in 2021 and will solicit public input.

**Comment:** One commenter raised various questions related to value-based purchasing.

**Agency Response:** When the Medicaid adult dental benefit is implemented, the MCOs will be required to pay the Medicaid fee schedule and dental will be excluded from the value-based purchasing strategies requirements of the MCO contracts. DMMA may address value-based purchasing with respect to dental at a future date.

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**Comment:** One commenter asked if the \$3 copay would be paid to Dental providers or Medicaid and if it is the Dental provider, is it per visit.

**Agency Response:** The \$3.00 copay will be paid to the provider on a per visit basis.

**Comment:** One commenter asked if patients that have coverage be able to pay for procedures that would not be covered by their insurance...ex whitening, crowns, etc.

**Agency Response:** If a member needs or desires services that are not covered under the adult dental Medicaid benefit, they do have the option to pay out-of-pocket. However, the provider must ensure the member understands that it is not a covered benefit and must provide the individual an itemized cost estimate up front before the provision of services.

**Comment:** One commenter inquired if the adult dental would be like the children's Medicaid or would it be billed under United Concordia.

**Agency Response:** For individuals enrolled in MCOs, claims will be submitted directly to the MCOs. For individuals in FFS, claims will be submitted to DMMA.

**Comment:** One commenter asked if insurance verification be handled the same as the children's program.

**Agency Response:** Providers can verify eligibility and enrollment by contacting the MCO provider services call center or utilizing the MCO provider portal on their website.

**Comment:** One commenter asked if fluoride would be covered?

**Agency Response:** The adult dental Medicaid benefit includes fluoride varnish applied twice per year, subject to the annual \$1000 limit.

**Comment:** One commenter asked for clarification of the \$1500 emergency coverage.

**Agency Response:** Delaware Medicaid recipients (over the age of 21) are eligible to receive an additional \$1,500 per year beyond the \$1,000 annual benefit limit for dental care treatment that may be authorized on an emergency basis through a review process of the Delaware Department of Health and Social Services (DHSS). The State has chosen to define "emergency basis" as follows:

An unforeseen or sudden occurrence demanding immediate remedy or action, without which a reasonable licensed dental professional would predict a serious health risk or rapid decline in oral health; or, when an individual's dental care needs exceed the \$1,000 per year dental benefit limit, and postponement of treatment until the next benefit year would result in tooth loss or exacerbation of an existing medical condition.

**Comment:** One commenter asked if patients have to have a certain MCO to be considered for the dental coverage?

**Agency Response:** The Adult dental benefit is not limited to any specific MCO.

**Comment:** One commenter asked if the coverage will work more like commercial insurance with 2 cleanings a year or will members get the \$1000 and if they use it before their 2nd cleaning is due that year they would have no coverage?

**Agency Response:** Preventive and diagnostic services are included in the \$1000 per year benefit limit. If the member has reached the benefit limit for the year, services will not be reimbursed.

**Comment:** One commenter suggested that DMMA promulgate more extensive regulations elaborating on the program.

**Agency Response:** DMMA will consider the need for additional policy guidance.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Clay and Clay Dental
- Delaware State Dental Society
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2020 *Register of Regulations* for Attachment 3.1-A, Page 4; Attachment 3.1-A, Page 4b Addendum; and Attachment 4.19-B, Page 19 should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Dental Services, specifically, to add dental services for adults, is adopted and shall be final effective February 11, 2021.

1/20/2021

Date of Signature

Molly K. Magarik, Secretary, DHSS

**\*Please Note: Due to the formatting requirements of Attachment 3.1-A, Page 4 of the regulation, it is being attached here as a PDF document:**

**3.1-A Page 4 Adult Dental.pdf**

Attachment 3.1-A  
Page 4b Addendum

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**

AMOUNT, DURATION, AND SCOPE OF MEDICAL  
AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

Health care professionals that provide the above services at the SBWCs include: physicians, nurse practitioners, licensed clinical social workers, certified and licensed drug and alcohol counselors, certified sexual assault counselors and registered dietitians. Licensure requirements for each practitioner type are specified in the Title 24 of the Delaware Code, Professions and Occupations and in the Delaware Administrative Code.

10. Dental Clinic Services for individuals younger than age 21 are only available as ESPDT services, ~~to children under age 21.~~

Dental services for individuals 21 and older are limited to:

- Diagnostics
- Preventive
- Restorative (Basic)
- Periodontics
- Prosthodontics Repairs
- Oral and maxillofacial Surgery

Limitations on dental services for individuals 21 and older:

- Payments for dental care treatments are subject to a \$3 recipient copay
- Annual maximum Adult Dental benefit may not exceed \$1,000 per year; except that an additional \$1,500 may be authorized on an emergency basis

[TN No. SPA #14-001]

Approval Date ~~[June 06, 2014]~~

[Supersedes

TN No. SPA N/A]

Effective Date ~~[January 01, 2014]~~Attachment 4.19-B  
Page 19STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE/TERRITORY: **DELAWARE**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES-  
OTHER TYPES OF CARE~~Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Dental Services~~~~Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Dental Services are reimbursed as follows. Except as otherwise noted in the plan, State developed fee schedule rates are the same for both government and private providers.~~~~Dental Services -Effective for dates of service on or after July 1, 2017, Delaware pays for dental services at the lower of:~~

- ~~• the provider's billed amount that represents their usual and customary charge; or~~
- ~~• the Delaware Medicaid maximum allowed amount per unit per covered dental procedure code according to a published fee schedule.~~

~~The Delaware Medicaid dental fee schedule will be developed based on the National Dental Advisory Service (NDAS) annual Comprehensive Fee Report. For each covered dental procedure code, Delaware's maximum allowable amount will be computed as a percentage of the NDAS published national fee. Delaware will rebase its dental fee schedule rates each time the NDAS publishes a new survey.~~~~Preventive General Dental Services shall be paid at ~~50.00%~~ 61.00% of the NDAS 70th percentile amounts  
Restorative General Dental Services shall be paid at ~~97.00%~~ 84.60% of the NDAS 70th percentile amounts  
Adjunctive General Dental Services shall be paid at 72.24% of the NDAS 70th percentile amounts  
Specialty Dental Services shall be paid at 68.80% of the NDAS 80th percentile amounts~~~~Access-Based Fees for certain specialty procedure codes may be established to account for deficiencies in rates that are based on the NDAS fee schedule percentages above relating to the adequacy of access to health care services for Medicaid clients.~~~~The maximum allowed amounts for procedure codes not included in the NDAS fee schedule or for new procedure codes established after the annual NDAS fee schedule is published will be based on the existing rates for similar existing services. If there are no similar services the maximum allowed amount is set at 80% of the estimated average charge until a rate can be established based on the NDAS fee schedule.~~~~The dental fee schedule is available on the Delaware Medical Assistance Portal <https://medicaid.dhss.delaware.gov>~~

TN No. SPA # _____	Approval Date _____
Supersedes _____	
TN No. SPA #17-009	Effective Date <b>[October 1, 2019]</b>

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504 (16 **Del.C.** §§122(3)(a) and 504)  
16 **DE Admin. Code** 4202

### ORDER

#### 4202 Control of Communicable and Other Disease Conditions

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (DHSS) initiated proceedings to adopt the State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions. The DHSS proceedings to adopt regulations were initiated pursuant to 29 *Del. C.* Chapter 101 and authority as prescribed by 16 *Del. C.* § 122(3)(a) and 504.

On November 1, 2020 (Volume 24, Issue 5), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 *Del. C.* § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 1, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

##### STATE OF DELAWARE REGULATIONS GOVERNING CONTROL OF COMMUNICABLE AND OTHER DISEASE CONDITIONS

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Control of Communicable and Other Disease Conditions were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (November 1, 2020 through December 1, 2020).

Entities offering written comments include:

- State Council for Persons with Disabilities, Chairperson Terri Hancharick

#### Comments

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Public Health's (DPHs) proposed regulation which clarifies that all novel coronavirus causing severe acute respiratory disease, including the 2019 novel coronavirus disease COVID-19, are considered notifiable and are required to be reported to the Division of Public Health in accordance with these regulations. The proposed regulation was published as 24 DE Reg. 464 in the November 1, 2020 issue of the Register of Regulations. SCPD has the following observations.

Like the emergency regulation at 434 in the November Register, this proposed regulation clarifies that all novel coronavirus causing severe acute respiratory disease, including the 2019 novel coronavirus disease COVID-19, are considered notifiable and are required to be reported to the Division of Public Health in accordance with these

regulations. Other revisions include technical changes such as adjusting capitalization, modifying how similar terms are internally referenced, adjusting statutory citation formats, removing gender pronouns, striking the term “carrier,” and clarifying that educational institutions include higher education institutions such as nursing schools, technical and community colleges, and universities. Yersiniosis was removed from the reportable diseases/conditions.

SCPD endorses DPH’s action in clarifying that COVID-19 and other similar novel coronaviruses are rapid report notifiable diseases/conditions, since quick response to testing and follow-up contact tracing are such essential components to the State’s COVID response.

- **Response:** The Department acknowledges and appreciates the SCPD’s comments. The removal of Yersiniosis in Appendix I of the proposed publication was a misprint, it has been restored to the final publication.

#### FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy, should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions are adopted and shall become effective February 11, 2021, 10 days after publication of the final regulation in the *Delaware Register of Regulations*.

1/15/2021

Date

Molly K. Magarik  
DHSS Cabinet Secretary

### 4202 Control of Communicable and Other Disease Conditions (Break in Continuity of Sections)

#### APPENDIX I State of Delaware - List of Notifiable Diseases/Conditions

List of Notifiable Diseases/Conditions	
AIDS (S)	Amoebiasis
Anthrax (T)	Arboviral human infections (including West Nile Virus, Eastern Equine Encephalitis, etc.,) etc.)
Babesiosis	Botulism (T)
Brucellosis (T)	Campylobacteriosis
Chickenpox (Varicella) Chancroid (S)	Chancroid (S) Chickenpox (Varicella)
Cholera (toxigenic <i>Vibrio cholerae</i> 01 or 0139) (T) Chlamydia (S)	Chlamydia (S) Cholera (toxigenic <i>Vibrio cholerae</i> 01 or 0139) (T)
Creutzfeldt-Jakob Disease (T) Coccidioidomycosis	Coccidioidomycosis Coronavirus, novel (novel coronavirus causing severe acute respiratory disease including the 2019 novel coronavirus disease [COVID-19], severe acute respiratory syndrome-associated coronavirus disease [SARS-CoV], and Middle East Respiratory Syndrome [MERS-CoV]) (T)
Cyclosporiasis Creutzfeldt-Jakob Disease (T)	Cryptosporidiosis
Dengue Fever (T) Cyclosporiasis	Cytomegalovirus (neonatal only)

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Enterohemorrhagic E.coli including but not limited to E.coli 0157:H7 (T) Dengue Fever (T)	Diphtheria (T)
Encephalitis Ehrlichiosis	Ehrlichiosis Encephalitis
Enterococcus species,(Vancomycin resistant invasive only) (A) Enterobacteriaceae, carbapenem- resistant (invasive or urine only)(A)	Enterobacteriaceae, carbapenem- resistant (invasive or urine only)(A) Enterococcus species,(Vancomycin resistant-invasive only) (A)
ESBL resistance (Extended Spectrum B-lactamases-invasive only) (A) Enterohemorrhagic E.coli including but not limited to E.coli 0157:H7 (T)	Foodborne Disease Outbreak (T) ESBL resistance (Extended-Spectrum B-lactamases-invasive only) (A)
Giardiasis Foodborne Disease Outbreak (T)	Glanders (T) Giardiasis
Gonorrhea (S) Glanders (T)	Granuloma inguinale (S) Gonorrhea (S)
Granuloma inguinale (S)	Hansen's Disease (Leprosy) Guillain-Barre
Guillain-Barre Haemophilus influenzae, invasive	Haemophilus influenzae, invasive Hansen's Disease (Leprosy)
Hantavirus (T)	Hepatitis A (T) Hemolytic Uremic Syndrome (T)
Hemolytic Uremic Syndrome (T) Hepatitis A (T)	Hepatitis G B
Hepatitis B C	Herpes, congenital (S) Hepatitis Other
Hepatitis Other Herpes, congenital (S)	Histoplasmosis Herpes, genital (S)
Herpes, genital (S) Histoplasmosis	Human Papillomavirus (S) HIV (S)
HIV (S) Human Papillomavirus (S)	Influenza Associated Mortality (T)
Influenza Associated Mortality (T)	Lead Poisoning Kawasaki Syndrome
Kawasaki Syndrome Lead Poisoning	Leptospirosis Legionellosis
Legionellosis Leptospirosis	Lyme Disease Listeriosis
Listeriosis Lyme Disease	Malaria-Lymphogranuloma venereum (S)
Lymphogranuloma venereum (S) Malaria	Melioidosis Measles (T)
Measles (T) Melioidosis	Meningococcal Infections, invasive only (T) Meningitis
Meningitis Meningococcal Infections, invasive only (T)	Mumps (T) Monkey Pox (T)
Monkey Pox (T) Mumps (T)	Nosocomial (Healthcare-Associated) Disease-Outbreak (T) Norovirus
Norovirus Nosocomial (Healthcare-Associated) Disease Outbreak (T)	Pertussis (T) Pelvic Inflammatory Disease (N. gonorrhea, C. trachomatis, or unspecified) (S)
Pelvic Inflammatory Disease (N. gonorrhea, C. trachomatis, or unspecified) (S) Pertussis (T)	Poliomyelitis (T) Plague (T)
Plague (T) Poliomyelitis (T)	Q Fever Psittacosis
Psittacosis Q Fever	Reye Syndrome Rabies (man and animal) (T)
Rabies (man and animal) (T) Reye Syndrome	Ricin Toxin (T) Rheumatic Fever
Rheumatic Fever Ricin Toxin (T)	Rocky Mountain Spotted Fever Rickettsial Disease
Rickettsial Disease Rocky Mountain Spotted Fever	Rubella, congenital (T) Rubella (including congenital, which is rapidly reportable [T])
Rubella (including congenital which is rapidly reportable) Salmonellosis	Severe Acute Respiratory Syndrome (SARS) (T) Shiga Toxin Production
Salmonellosis Shigellosis	Shigellosis Silicosis
Shiga Toxin Production Smallpox (T)	Smallpox (T) Staphylococcal aureus, Methicillin Resistant-invasive only (MRSA) (A)
Silicosis Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T)	Staphylococcal aureus, Methicillin Resistant invasive-only (MRSA) (A) Staphylococcal Enterotoxin (T)

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<del>Staphylococcal Enterotoxin (T) Streptococcal Disease, invasive group A or B (T)</del>	<del>Streptococcal Disease, invasive group A or B (T) Streptococcus pneumoniae, invasive (sensitive and resistant) (A)</del>
<del>Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T) Syphilis (S)</del>	<del>Syphilis (S) Tetanus (T)</del>
<del>Streptococcus pneumoniae, invasive (sensitive and resistant) (A) Toxic Shock Syndrome (Streptococcal or Staphylococcal)</del>	<del>Toxic Shock Syndrome (Streptococcal or Staphylococcal) Toxoplasmosis</del>
<del>Tetanus (T) Trichinellosis</del>	<del>Trichinellosis Tuberculosis (T)</del>
<del>Toxoplasmosis Tularemia (T)</del>	<del>Tularemia (T) Typhoid Fever (T)</del>
<del>Tuberculosis (T) Typhus Fever (endemic flea borne, louse borne, tick borne)</del>	<del>Typhus Fever (endemic flea borne, louse borne, tick borne) Vaccine Adverse Reaction</del>
<del>Typhoid Fever (T) Vibrio, non-cholera</del>	<del>Vibrio, non-cholera Viral Hemorrhagic Fevers (T)</del>
<del>Vaccine Adverse Reaction Waterborne Disease Outbreaks (T)</del>	<del>Waterborne Disease Outbreaks (T) Yellow Fever (T)</del>
<del>Viral Hemorrhagic Fevers (T) Yersiniosis [Yersiniosis]</del>	<del>Yersiniosis</del>
<del>Yellow Fever (T)</del>	

(T) - report by rapid means (telephone, ~~fax~~ fax, or other electronic means)

(S) - sexually transmitted disease, report required within 24 hours

(A) - ~~Drug Resistant~~ Drug-Resistant Organisms required to be reported within 48 hours

Others - report required within 48 hours

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2020 issue of the *Register* at page 464 (24 DE Reg. 464). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**4202 Control of Communicable and Other Disease Conditions**

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)c (16 **Del.C.** §122(3)c)  
16 **DE Admin. Code** 4462

### ORDER

#### 4462 Public Drinking Water Systems

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (DHSS) initiated proceedings to adopt the State of Delaware Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 *Del. C.* Chapter 101 and authority as prescribed by 16 *Del. C.* § 122(3)(c).

On December 1, 2020 (Volume 24, Issue 5), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 *Del. C.* § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 31, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

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## SUMMARY OF EVIDENCE

### STATE OF DELAWARE REGULATIONS GOVERNING PUBLIC DRINKING WATER SYSTEMS

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Public Drinking Water Systems were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (December 1, 2020 through December 31, 2020).

Entities or individuals offering written comments include:

- Mr. Ed Hallock

### Comments

I want to thank you for the opportunity to comment on these proposed changes to the public drinking water regulations. My name is Ed Hallock and I was the Program Administrator for the Office of Drinking Water (ODW) for 25 years until my retirement in January 2017. I continue to fully support the addition of cross connection control (CCC) requirements for all public water systems. In 2016 the ODW worked with several stakeholder groups to create stand-alone CCC regulations. As a result of that work, I do have comments on the revised Regulatory Flexibility Analysis (RFA) and Impact Statement Form (ISF).

In Item 1 on page 4 of the RFA can someone explain what is meant by "... reporting is passive, i.e., reporting will be verified during the course of routine enforcement"? I am unclear as to what is meant by the term routine enforcement.

- **Response:** The primary method of enforcement will be in the course of sanitary surveys. Enforcement may also be carried out through other activities such as site visits for reasons other than sanitary surveys, complaint investigations, unusual events, or other situations determined by the Division of Public Health (DPH) where cross-connection control enforcement is reasonable and potentially related to the situation.

In item 2 on page 4 of the RFA it is noted that water systems must implement their CCC programs within one year. I believe this is very aggressive for those water systems who do not already have a CCC program. I believe water systems should create their CCC program/plan within one year and identify the time frame for full implementation as part of the program/plan.

- **Response:** The 2016 draft stand-alone regulations required public water systems to submit a comprehensive cross-connection control plan within one year of the effective date of those draft regulations. The 2016 draft regulations were used as a foundation for developing the current proposed Section 21.0 of Delaware's drinking water regulations. The start of enforcement of the proposed Section 21.0 would be one year from the effective date of the regulations. Since enforcement would be carried out under routine activities, for most public water systems, the proposed Section 21.0 would be enforced on the system's next sanitary survey after the one-year period. However, DHSS understands this concern and has extended the implementation period to three years for the final publication of these regulations. Therefore, Section 21.0 will be enforced on the system's next sanitary survey after the three-year period.

In item 5 on page 4 of the RFA it is noted that a system may do a public education program when only low hazards exist and this is good. Is there any exemption from Section 12.2.1 which requires an individual appropriately trained and experienced in CCC programs for small systems? Can systems contract for these services?

- **Response:** DHSS presumes that subsection 21.2.1 is intended here rather than subsection 12.2.1. Subsection 21.2.1 applies to all public water systems. Guidance will be provided by DPH appropriate for the system's size and type. The regulations do not specify the individual responsible for the program to be a direct employee of the system or system owner.

Item 6 on page 4 of the RFA implies that since the regulation allows for an education program for some water systems and "requires public water systems to ensure no service connections are installed or maintained where actual or potential cross-connections exist or are not controlled," that this will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses. I believe this fails to recognize the potential cost that will be shifted to some businesses which are deemed to have potential hazards and will then be required to install backflow prevention assemblies on their service connection.

- **Response:** The regulations do not mandate that public water systems shift costs to customers.

I believe the Cost Estimate #2 Table responses should be revised to reflect costs associated with the CCC program since it is not mandated by the EPA.

- I believe the response to the first three questions should be "no"
- The response to question 6 should be "yes" since some public water systems or their customers may need to install backflow prevention assemblies.
- The response to question 8a should be "ongoing" since a public water system will need to maintain records regarding the installation, inspection and maintenance of backflow prevention assemblies and to maintain consistency with the plumbing regulations inspections should be conducted annually.
- How was the response to 8b derived? Did the Office of Drinking Water talk with those water systems that already have a CCC program to determine the administrative burden?
- The response to question 9 should be "yes." Those systems that do not currently have a CCC program will need to establish new processes to maintain a CCC program. Many of these water systems are small.
- The response to question 10 should be "yes" if licenses plumbers are considered to be an outside professional. Therefore,
- The response to 10a would be "unknown" since a small system may only need a contractor to do a survey of potential cross connections and if none are found they are done. Another system may need to contract with a firm to put together and maintain a full blown CCC program.
- The response to 10b is "potentially yes see 10a."
- The response to question 13 should be "yes" in order to comply with Section 21.2.1.
- How was the response to question 17 derived? Were water systems with existing CCC programs consulted?
- **Response:** Cost Estimate Option 2 questions are for the regulations as a whole, which include EPA-required changes to maintain primacy of the SDWA. This comment, including the bulleted questions, are specific to Section 21.0, which is not the intent of the answers to the questions under Cost Estimate Option 2 of the RFA.

Lastly, since the option of listing stakeholders was not taken, I am interested in knowing what stakeholders were consulted in developing Section 21 of the regulations. Since the chapter for cross-connection control was added to provide for consistency with Delaware's plumbing regulations was the Plumbing Program consulted? Also, since only licensed plumbers are authorized to install, inspect and maintain backflow prevention assemblies per the plumbing regulations was the Board of Plumbing Examiners consulted. The Delaware Rural Water Association is a nonprofit organization that represents all small public water systems and was an important stakeholder in 2016 when we drafted the first stand-alone regulations, were they consulted?

- **Response:** The development of Section 21.0 was a combined effort within DPH, Health Systems Protection, which oversees both the drinking water program and the plumbing

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program. Division representatives met with water utility representatives and with the Delaware Rural Water Association in October 2018 to discuss cross-connection control regulations.

## FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed. DHSS finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Control of Communicable and Other Disease Conditions is adopted and shall become effective February 11, 2021, 10 days after publication of the final regulation in the *Delaware Register of Regulations*.

1/15/2021

Date

Molly K. Magarik, Cabinet Secretary

## **4462 Public Drinking Water Systems**

### **1.0 General Provisions**

*(Break in Continuity Within Section)*

#### 1.12 Approval of Water Supplies:

*(Break in Continuity Within Section)*

1.12.2 Effective October 1, 1999, in addition to the requirements in subsection 1.12.1, approval of new community and non-transient non-community water systems shall be dependent upon the following:

*(Break in Continuity Within Section)*

1.12.2.2 Managerial and financial information as required by the Division to demonstrate compliance with Capacity as defined in ~~[subsection 1.1. Section 2.0.]~~ This information may include, but not be limited to; annual reports, water system plans or business plans, and Review Guidelines, copies available from the Office of Drinking Water.self-assessments/peer reviews, criteria used by lenders, financial viability assessment methods, financial and managerial training.

*(Break in Continuity of Sections)*

### **21.0 Cross-Connection Control**

*(Break in Continuity Within Section)*

#### 21.5 Violations.

21.5.1 The following items shall be deemed to be violations of these regulations:

21.5.1.1 Failure to develop and implement a comprehensive cross-connection control program in accordance with subsection 21.2 of this regulation within ~~[one-year three years]~~ of the effective date of these regulations;

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2020 issue of the *Register* at page 532 (24 DE Reg. 532). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**4462 Public Drinking Water Systems**

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# FINAL REGULATIONS

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 2304 and 2312 (18 **Del.C.** §§311, 2304 & 2312)  
18 **DE Admin. Code** 1214

### FINAL REGULATORY IMPLEMENTING ORDER

#### 1214 Suitability In Annuity Transactions

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the December 1, 2020 edition of the *Register of Regulations* at 24 **DE Reg.** 533, the Commissioner of the Delaware Department of Insurance (Commissioner), published a notice of intent to amend Regulation 1214, Suitability In Annuity Transactions. Regulation 1214 requires insurers and producers to establish a system to supervise recommendations made to consumers when insurers and agents (producers) market and sell annuities, and that standards established under that system must also be consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA).

As discussed in the proposal, the proposed amendments to the regulation codify in the Delaware Administrative Code the enhanced standards for annuity sales that were recently adopted by the National Association of Insurance Commissioners (NAIC) into Model Regulation #275, *Suitability in Annuity Transactions Model Regulation* (Model #275). The enhanced standards, labeled collectively as "the best interest" standards, require carriers and agents (producers) to ensure that consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those persons who are selling the products do not place their financial interests above consumers' interests. In so doing, agents (producers) and carriers are required to act with "reasonable diligence, care and skill" in making recommendations to consumers by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. The amendments also include enhancements to the current model's supervision system to assist agents (producers) and carriers in complying with the regulation (the "safe harbor" provisions).

It is noteworthy that states must work toward adopting the 2020 revisions within five years after adoption of the revisions by the full NAIC membership to maintain their authority to regulate the sale of fixed annuities.

The authority for the proposed amendments is 18 **Del.C.** §§311, 2304, and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

The Department solicited written comments from the public in compliance with the provisions of the Administrative Procedures Act at 29 **Del.C.** §10118(a) that include timeframes for a comment period that includes a public hearing. The public hearing was held on Monday, December 21, 2020 at 9:00 a.m as required by 18 **Del.C.** §2312. Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The Department received a total of three oral comments and five written comments on the proposal with three commenters submitting duplicate oral and written comments. Both a recording of the virtual public hearing and copies of the written comments received are on file with the Department.

All of the commenters voiced support for the proposed amendments. Several commenters supported the proposed amendments because having states adopt uniform standards helps producers and agents standardize their business operations while ensuring that business practices are protective of consumers. Other commenters wrote in strong support of a best interest standard of conduct for annuity professionals because this enhanced

standard provides "meaningful and effective consumer protections, while preserving access to annuity products and supporting those who manufacture, distribute, and sell these critical retirement and financial planning tools."

Another commenter offered support of the provision of an August 1, 2021 effective date, stating that the delayed effective date would allow insurance companies "ample time . . . to put into place the protocols and processes necessary to support compliance with [the] amended regulation." Two commenters applauded the Department for its leadership in being one of the early adopters of the revised model regulation.

One commenter, who also offered comments in full support of the adoption of the regulation, pointed out that subsection 5.2.6 contains new training requirements and requested that the Department issue a Bulletin similar to a bulletin issued by the Iowa Insurance Commissioner, that clarifies this provision to include opportunities for reciprocity and other educational flexibilities. The Department is taking this request under consideration and will address it outside the regulatory process.

## II. FINDINGS OF FACTS

1. The proposed amendments to Regulation 1214, Suitability In Annuity Transactions, properly codify in the Delaware Administrative Code the enhanced standards for annuity sales that were recently adopted by the National Association of Insurance Commissioners (NAIC) into Model Regulation #275, *Suitability in Annuity Transactions Model Regulation (Model #275)*.
2. Timely adoption of the proposed amendments ensures the Department will be able to maintain its authority to regulate the sale of fixed annuities.
3. The Department acknowledges the comments in unanimous support of the regulation.
4. The Department has met the public notice requirements of the Administrative Procedures Act.
5. It is appropriate to adopt the amendments to 18 **DE Admin. Code** 1214 as proposed in the December 1, 2020 *Register of Regulations* for the reasons set forth in this Final Order and in the proposal.

## III. DECISION TO ADOPT AMENDMENTS TO REGULATION 1214

For the foregoing reasons, it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 1214 as described herein.

## IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 2304, and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, on the date indicated below. The effective date of the herein-described amendments to the regulation shall be August 1, 2021, which date is six (6) months after the date the amendments to the regulation are published as final.

IT IS SO ORDERED.

The 15th day of January, 2021

Trinidad Navarro  
Commissioner, Delaware Department of Insurance

### 1214 Suitability In Annuity Transactions

#### 4.0 Duties of Insurers and ~~of Insurance~~ Producers

\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2020 issue of the *Register* at page 533 (24 DE Reg. 533). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1214 Suitability In Annuity Transactions**

**DEPARTMENT OF LABOR**  
**DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10113(b)(2) (19 **Del.C.** §3122 & 29 **Del.C.** §10113(b)(2))  
 19 **DE Admin. Code** 1201

**ORDER**

**1201 Unemployment Insurance Appeal Board Regulations**

Pursuant to 29 *Del. C.* § 10118 and 19 *Del. C.* § 3122, the Unemployment Insurance Appeal Board ("Board") issues this Order adopting the below amendment to the Board's Regulations. Specifically, pursuant to 29 *Del. C.* § 10113(b)(2), regulation 4.7.4 may be changed without prior publication in order to codify existing agency practice and procedure during the ongoing State of Emergency declared by Governor Carney for the State of Delaware as a result of the serious public health threat from the novel coronavirus ("COVID-19").

**SUMMARY OF THE EVIDENCE**

1. Regulation 4.7.4 states "The Board shall not receive into evidence any new testimony offered by means of a telephone or other electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device."

2. In order to codify the practice and procedure used by the Board during the ongoing State of Emergency due to COVID-19, the Board amends Regulation 4.7.4 to add subsection 4.7.4 which states as follows (additions are underlined, removals are stricken through):

4. Evidence.

"4.7.4 The Board ~~shall not~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device."

The effective date of this Order will be ten (10) days from its publication in the *Delaware Register of Regulations* on February 1, 2021.

**IT IS SO ORDERED** this 13<sup>th</sup> day of January, 2021.

**UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:**

Elmer L. Newlin, Chairman	Vance G. Daniels
Beverly G. Bell	Drew A. Dorak
Sarah Buttner	

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## 1201 Unemployment Insurance Appeal Board Regulations

### 1.0 Definitions

As used in these Rules and Regulations, the following definitions shall apply:

“**Board**” shall mean the Unemployment Insurance Appeal Board.

“**Chairman**” shall mean the Chairman of the Board.

“**Hearing Officer**” shall mean the Appeals Referee or his or her designate who heard the initial appeal.

“**Hearsay Evidence**” shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

“**Relevant Evidence**” shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

### 2.0 Location of Unemployment Insurance Appeal Board

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board's fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

### 3.0 Commencement

A hearing before the Board may be initiated by:

- 3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;
- 3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
- 3.3 The Board *sua sponte* with notice to the parties below or their counsel.

### 4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
  - 4.2.1 The Board may consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing. Absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing.
- 4.3 Representation.
  - 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.

- 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
- 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.
- 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
- 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
- 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
- 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
- 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
- 4.7.4 The Board ~~shall not~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.
- 4.8 Subpoenas.
- 4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.
- 4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.
- 4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.
- 4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

## 5.0 Remand

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

## 6.0 Decisions

- 6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.
- 6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.

- 6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.
- 6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 **Del.C.** §3323.

**7.0 Rehearing**

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

- 7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.
- 7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.
- 7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d); 903(e)(2)a.1 (7 **Del.C.** §§901(c) & (d) & 903(e)(2)a.1)  
**7 DE Admin. Code 3502 & 3503**

**Secretary's Order No.: 2020-F-0038**

**RE: Approving Final Regulation, pursuant to 7 Del. C. § 903(e)(2)a.1, to Amend 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit***

**Date of Issuance: December 23, 2020**

**Effective Date of the Amendment: January 1, 2021**

**3502 Striped Bass Spawning Season and Area Restrictions**  
**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del. C.* § 903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 *Del. C.* Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 *Del. C.* § 903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 *Del. C.* Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the

Atlantic States Marine Fisheries Commission, the Atlantic Coastal Fisheries Cooperative Management Act, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 *Del. C.* § 903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the *Delaware Register of Regulations*.

### Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit* as part of an effort to reduce Striped Bass catch and release mortality in the recreational fishery by adopting a specified management measure approved and mandated by the Atlantic States Marine Fisheries Commission's ("ASMFC") Atlantic Striped Bass Management Board. Specifically, this order mandates the use of non-offset circle hooks when fishing with bait for the recreational Striped Bass fishery beginning on January 1, 2021. This order is required for Delaware to remain compliant with Addendum VI to Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass.

The 2018 benchmark Striped Bass stock assessment and peer review conducted by the Northeast Regional Stock Assessment Workshop found that Striped Bass are overfished and overfishing is occurring. Approximately 90% of Striped Bass removals were attributed to the recreational fishery and recreational removals attributed to catch and release mortality were estimated to be as high as 50% of total recreational removals in recent years. Non-offset circle hooks have been shown to reduce release mortality of recreationally caught Striped Bass.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*, pursuant to 7 *Del. C.* §§ 901(c) & (d) and 903(e)(2)a.1. This specific management measure is required to be implemented by January 1, 2021, pursuant to ASMFC Atlantic Striped Bass Management Board action.

### ORDER

In accordance with 7 *Del. C.* § 903(e)(2)a.2, it is hereby ordered, this 23<sup>rd</sup> day of December, 2020, that the above referenced amendments to 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendments shall take effect January 1, 2021.

Shawn M. Garvin  
Secretary

#### 3502 Striped Bass Spawning Season and Area Restrictions.

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.
- 2.0 It is unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.
- 3.0 It is unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

- 4.0 It is unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a drift gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.
- 5.0 It is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at the southern shore of Appoquinimink River at latitude 39°26'51.00"N and longitude 75°34'46.00"W and continuing due east to the boundary with New Jersey during January, February, March, April or May.
- ~~6.0 It is unlawful for any person to fish during the striped bass spawning season defined in 3502 Section 1.0 and in the areas defined in 3502 Section 2.0 with natural bait using any hook other than a non-offset circle hook when said hook measures greater than three eighths (3/8) inches as measured from the point of the hook to the shank of the hook.~~

### 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.

(Penalty Section 7 Del.C. §936(b)(2))

#### 1.0 Definitions

The following words and terms, when used in this regulation, have the following meanings unless the context clearly indicates otherwise:

"Circle hook" means a hook where the point is pointed perpendicularly back towards the shank.

"Non-offset" means the hook point and barb being in the same plane as the hook shank.

- ~~4-02.0~~ It is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- ~~2-03.0~~ It is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- ~~3-04.0~~ Unless otherwise authorized, it is unlawful for any recreational fisherman to take and reduce to possession more than one striped bass per day (a day being 24 hours) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.
- ~~4-05.0~~ Unless otherwise authorized, it is unlawful for any recreational fisherman to have in possession more than one striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.
- ~~5-06.0~~ Notwithstanding 7 Del.C. §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.
- 7.0 It is unlawful for any recreational fisherman to fish for striped bass with natural bait using any hook other than a non-offset circle hook.

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# FINAL REGULATIONS

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## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES TANK MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Sections 7405 through 7410 (7 Del.C. §§7405 - 7410)  
7 DE Admin. Code 1351

Secretary's Order No.: 2021-WH-0001

**RE: Approving Final Regulatory Amendments to 7 DE Admin. Code 1351:  
*Underground Storage Tank Systems***

Date of Issuance: January 04, 2021

Effective Date of the Amendment: February 21, 2021

### 1351 Underground Storage Tank Systems

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del.C. §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

#### Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems* ("Amendments" or "UST Regulations"). This action is being taken by the Department at this time to (1) clarify existing regulatory language; (2) provide additional clarifying language; (3) include a federally mandated compliance deadline; and (4) correct various typographical and grammatical errors in Delaware's current UST Regulations. It should be noted that Delaware's UST Regulations must be at least as stringent as the correlating federal regulations, pursuant to the requirements of 40 CFR 281, *State Program Approval*.

The following Parts of the existing UST Regulations are directly affected by the aforementioned proposed Amendments:

- Part A: Definitions and Notification
- Parts B/C/D: Installation, Operation and Maintenance
- Part E: Reporting, Release Investigation and Remedial Action
- Part F: Financial Responsibility

The Department is making numerous corrections to the existing UST Regulations to ensure that Delaware's regulatory language mirrors the correlating federal requirements governing Underground Storage Tanks ("USTs"). Other corrections are being made to promote consistency in the regulatory language found throughout the existing UST Regulations. For example, in Part "B," Sections 1.0 and 2.0, the Department is correcting the term "line leak detection" to "piping release detection." This is a defined term correction for consistency in the regulatory language found throughout the existing UST Regulations. Additional cross-references to various Parts and Sections of the UST Regulations are now being included within the regulatory language itself to serve as further guidance for the regulated community. Still other numerous clerical and citation corrections have been made in the existing UST Regulations by the Department as well, in order to correct previous errors and omissions.

Of particular note, in Part "B," Section 1.0, under *Marina Fueling Facility USTs*, "NFPA 30A Applicability," the phrase "after January 11, 2020" is being changed to "installed on or after January 11, 2008." This change serves not only as a correction, but also as a clarification for the benefit of the regulated community. NFPA 30 requirements were incorporated in Delaware as part of the Department's January 11, 2008 UST regulatory promulgation. Thus, the NFPA 30 requirements only apply to marina UST systems installed on or after January 11, 2008. Also, in Part "B," Sections 1.0 and 2.0, references are being added to the existing regulatory language to

include the phrase "adherence to manufacturer's specifications" to serve as additional guidance and clarification for the regulated community.

One of the more notable additions to Sections 1.0 and 2.0 of Parts "B/C/D", specifically, under *Overfill Prevention Equipment*, is the following important Federal mandate (found at 40 CFR 280.35):

*The first inspection shall occur prior to October 13, 2021.*

The above deadline inclusion is applicable to all USTs regulated under Parts "B/C/D," but was erroneously omitted from the Department's most recent UST regulatory update. This particular change now corrects that omission.

The Department has the statutory basis and legal authority to act with regard to the above referenced proposed Amendments, pursuant to 7 *Del.C.* §§7405 - 7410. The Department published its initial proposed Amendments in the November 1, 2020 *Delaware Register of Regulations*. Thereafter, the virtual public hearing regarding this matter was held on December 9, 2020.

No members of the public attended the aforementioned public hearing held by the Department in this matter. Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for fifteen (15) additional days subsequent to the date of the virtual public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on December 24, 2020, with only one written comment received by the Department during the post-hearing phase of this promulgation.

Subsequent to the close of the Record, the Department's Division of Waste and Hazardous Substances staff prepared a Technical Response Memorandum ("TRM"), dated December 28, 2020. The TRM formally acknowledged and responded to the one supportive comment received from the public concerning the Department's proposed Amendments, for the benefit of the Record.

It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 28, 2020 ("Report"), which expressly incorporated the Department's proposed Amendments, along with the aforementioned TRM, into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the Department's proposed Amendments as attached to the Report as Appendix "A."

## Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems*, are well-supported. I further find that the Department's experts fully developed the Record to support adoption of these proposed Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems*, pursuant to 7 *Del.C.* §§7406 - 7408;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments, and all proceedings in a

manner required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the virtual public hearing held on December 9, 2020, and during the 15 days subsequent to the hearing (through December 24, 2020), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems* will enable Delaware's UST Regulations to (1) clarify existing regulatory language; (2) provide additional clarifying language; (3) include a federally mandated compliance deadline; and (4) correct various typographical and grammatical errors in the current UST Regulations;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's Hearing Officer's Report, including its established Record and the recommended proposed Amendments as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed Amendments, as published in the November 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, and shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving as final the proposed Amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2020 issue of the *Register* at page 467 (24 DE Reg. 467). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[1351 Underground Storage Tank Systems](#)**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 210-218 (16 Del.C. §§210-218)

### NOTICE OF PUBLIC COMMENT

#### Birth to Three Early Intervention Program

##### Notice of Public Participation:

##### Public comment on the FFY 2021 (July 1, 2021-June 30, 2022) Annual Part C Grant Application Under Part C of the Individuals with Disabilities Education Act (IDEA)

The Department of Health and Social Services, Birth to Three Early Intervention Program (the Program) is announcing the publication of the draft FFY 2021-22 Annual Application. No revisions to policies or procedures are being made at this time.

In order to meet the public participation requirements under §441 of the General Education Provisions Act (GEPA) at 20 USC 1232d(b)(7)(B) and Part C of the IDEA at 34 CFR §303.208, the Program, as lead agency for implementation of Part C of the IDEA in Delaware, is publishing the draft application, which includes the budget for the Part C federal funds. The draft application will be available for public review at <https://www.dhss.delaware.gov/dhss/dph/communityhealth.html> for 60 days beginning **February 1 through April 3, 2021**.

The purpose of the public participation period is to gather comments regarding the draft grant application prepared by the Program.

**The opportunity for public comment on the draft application is available for 30 days beginning March 4 through April 3, 2021.** Comments will be accepted from the general public, including parents of infants and toddlers with disabilities, providers of services, advocacy groups and organizations and other stakeholders in the state.

Comments may be provided to the Birth to Three Early Intervention Program via mail or email to:

*Birth to Three Early Intervention Program*  
410 Federal St, 3rd Fl, Suite 7, Dover, DE 19901  
[DHSS\\_DPH\\_BirthToThree@delaware.gov](mailto:DHSS_DPH_BirthToThree@delaware.gov)

Responses to individual questions and comments will not be provided; however, the Birth to Three staff will review and consider all comments and make any modifications to the application that are deemed necessary. **The Birth to Three Program must receive your comments no later than April 3, 2021.**

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## CALENDAR OF EVENTS/HEARING NOTICES

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### DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

#### PUBLIC NOTICE

#### 1301 Delaware Criminal Justice Information System Rules and Regulations

**Purpose:** In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 86, Section 8605, the Delaware Criminal Justice Information System (DELJIS) Board of Managers proposes to revise its regulations. These proposed regulations are applicable to all users of the Delaware Criminal Justice Information System (CJIS) and to any agency requesting access to CJIS from the Board. The proposed regulations will ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code.

**Notice of Hearing:** A virtual public hearing will be held via Webex. Join the Webex meeting as follows:

When: February 25, 2021 10:00 AM Eastern Time (US and Canada)

Topic: Hearing for Changes to the Delaware Criminal Justice Information System Rules and Regulations

Please click the link below to join the webinar:

<https://stateofdelaware.webex.com/stateofdelaware/k2/j.php?MTID=t0d606f0763dff378144c596bb322981>

Passcode: Board

Join by Telephone:

Webex Dial In: 1-408-418-9388

Webex Session Number: 179 785 4859

Webex Password: Board

The hearing is to provide an opportunity for public comment on the proposed Delaware Criminal Justice Information System Rules and Regulations.

**Written Comments:** The DELJIS Board of Managers will receive written comments, suggestions briefs or other written material until the close of business, 4:30 p.m., March 12, 2021. Written comments shall be submitted via e-mail to [Marianne.Kennedy@delaware.gov](mailto:Marianne.Kennedy@delaware.gov) or via the USPS to Ms. Marianne Kennedy Chair, DELJIS Board of Managers, 800 Silver Lake Blvd. Suite 101, Dover, DE 19904.

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### DELAWARE RIVER BASIN COMMISSION

#### PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, February 10, 2021** beginning at **1:30 p.m.** In light of COVID-19 mitigation measures in effect for DRBC member states, the Commission will conduct the public hearing on a remote platform. Please check the Commission's website, [www.drbc.gov](http://www.drbc.gov), on or after January 27, 2021 for details regarding the resolutions and draft docket decisions that will be subjects of the public hearing and for information on how to attend and participate in this remote public hearing.

The Commission's quarterly business meeting will be held the following month, on **Wednesday, March 10, 2021**, beginning at **10:30 a.m.** The business meeting will also be conducted remotely. Details about the meeting format and how to attend will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), no later than February 28, 2021.

For additional information, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Denise McHugh at [denise.mchugh@drbc.gov](mailto:denise.mchugh@drbc.gov) or Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

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### DELAWARE STATE FIRE PREVENTION COMMISSION

#### PUBLIC NOTICE

#### 701 Administration and Enforcement

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 701 by updating language in Chapter 1, Section 3.1.4 to be consistent with the provisions of the existing

regulations and the codes and standards of the National Fire Protection Association (NFPA), as adopted and/or modified by these Regulations for building rehabilitation of existing buildings; changed minor wording in Chapter 3, Section 3.0 Permit Required 3.1.5 change more than 50 to 50 or more; Chapter 4, Submittal of Plans 2.0 - Requirement for Sealed or Signed Plans. Update 2.1 & 2.2 in its entirety to be more consistent with the requirements of the building officials; Chapter 7 Adopted Codes and Standards - Update 120 plus current adopted NFPA codes and standards to the most recent version, delete four adopted NFPA codes and standards no longer in use and add three new NFPA codes and standards. Update and delete the current modifications of NFPA codes and standards to the recent proposed adopted codes and standards.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

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## **DELAWARE STATE FIRE PREVENTION COMMISSION**

### **PUBLIC NOTICE**

#### **702 Fire Protection in Building Construction**

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 702 by: removing inconsistencies with current regulations and National Fire Prevention Association standards 13, 13R & 13D to better clarify where sprinklers are required to be installed; by correcting spelling and other typographical errors; by removing outdated NFPA codes and standards and replace with updated NFPA codes and standards; changing hydrant spacing for one and two-family detached dwellings from 1,000 feet on center to 800 feet on center to be consistent with the rest of the requirements in Fire Flow Table 2; and making other changes as detailed below.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

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## **DELAWARE STATE FIRE PREVENTION COMMISSION**

### **PUBLIC NOTICE**

#### **703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers**

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 703 by deleting an incorrect reference in the definition of "Testing" in Chapter 1, Section 2.0.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

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## **DELAWARE STATE FIRE PREVENTION COMMISSION**

### **PUBLIC NOTICE**

#### **704 Hazardous Processes and Operations**

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 704 by replacing the reference to 16 *Del. C.* § 6611 with 16 *Del. C.* § 6614 in Chapter 2, Section 5.1.8.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments

may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

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**DELAWARE STATE FIRE PREVENTION COMMISSION****PUBLIC NOTICE**  
**705 General Fire Safety**

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposes to revise regulation 705 by: replacing September 1, 2015 with March 11, 2016 in Chapter 1, subsection 15.3; updating the perimeter access requirements in Chapter 5, subsection 3.5; updating the requirement for parking between building and perimeter access in Chapter 5, subsection 3.5.2; and by updating figure 6.1 in Chapter 5.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Assistant for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments **should be sent so that they are received by no later than March 3, 2021**. Comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov).

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**DEPARTMENT OF AGRICULTURE****HARNESS RACING COMMISSION****PUBLIC NOTICE**  
**501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 *Del. C.* Section 10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments for clarity by adding a definition.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on January 5, 2021, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On January 12, 2021, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period beginning on February 1, 2021 to March 3, 2021 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on March 9, 2021 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB March 3, 2021. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****DELAWARE COUNCIL ON POLICE TRAINING****PUBLIC NOTICE****801 Regulations of the Delaware Council on Police Training**

The Council on Police Training (COPT), pursuant to 11 Del. C. 8404 (a)(14), proposes to revise its regulations. The proposed amendments, which were voted on in a regular meeting by the COPT on January 12, 2021, seek to update information regarding firearms training and qualifications, temporarily waiving or modifying minimum standards under declared states of emergency, reviewing reciprocity cases, and other minor technical corrections and clarifications.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail [Christopherm.klein@delaware.gov](mailto:Christopherm.klein@delaware.gov). Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on March 03, 2021. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****3800 BOARD OF DIETETICS/NUTRITION****PUBLIC NOTICE**

The Delaware Board of Dietetics/Nutrition, pursuant to 24 Del. C. §3805(11), proposes to revise its regulations. The proposed amendments to the regulations seek to wholly amend the continuing education requirements for renewal to more closely align with the requirements of Commission on Dietetic Registration thus expanding the ways in which a licensee can obtain continuing professional education. In addition, the changes clarify the time a licensee may remain on inactive status and the procedures required to reactivate a license.

The Board will hold a public hearing on the proposed rule change on February 26, 2021 at 1:30 p.m. via teleconference. The teleconference phone number is 1-302-526-5475. Please enter conference id # 680416 to access the meeting. Written comments should be sent to Danielle Ridgway, Administrator of the Delaware Board of Dietetics/Nutrition, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until March 15, 2021.

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